

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1315

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-1315

UNITED STATES OF AMERICA,

Appellant,

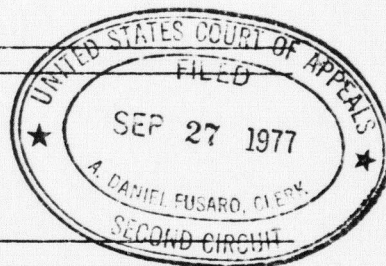
.-against-

PAUL LABRIOLA and THOMAS CONTINO

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX



DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

PAGINATION AS IN ORIGINAL COPY

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D. C. Form No. 100
CRIMINAL DOCKET

75 CR 659

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.: Marcia Katz 751,894
☒ PAUL LABRIOLA	☒ ANTHONY PECORARA	for deft. Concetta Ken
☒ JOSEPH MOGAVERO	☒ JOHN DOE aka Walter	Barry Krinsky
☒ THOMAS CONTINO	☒ true name WALTER REMINICK	186 Court St. Bklyn, 643-1878
☒ ES CONTINO	☒ JANE DOE aka Joyce	
☒ ROBERT NAPOLITANO	☒ true name CONCETTA KENNEDY	
☒ WILLIAM PALUMBO		For Defendant: LABRIOLA:
☒ FRANK MEMOLO		Evseroff & Sonenshin by J.A Rabin
☒ MARGARET SIERRA		186 Court St., B 855-1111
☒ MARY MAGLIONE		NAPOLITANO-Martin Ozer
☒ RICHARD SULLIVAN		5th Ave N.Y. MU5-7789

Did conspire to forge, utter as true

ABSTRACT OF COSTS	AMOUNT	ATTORNEYS	RECEIVED AND DISBURSED
Fine,		for deft Labriola	
Clerk,		Court appointed co.	
Marshal,		Philip E. 222 Broadway	
Attorney,		32 Court St., Bklyn	
Commissioner's Court,		852-4335 (RECO)	
Witnesses,		Court apptd counsel	
		for deft Mogavero	
		Joanna Seybe	
		3 Uphill Lane	
		Woodbury, N.Y. 11797	
		516-42-31 692-4029	
		for Mary Maglione:	
		Court assigned counsel	
		Frank Gogly	
		16 Court St. Bklyn	
		834-0395	
		5th Ave N.Y.	

DATE	DESCRIPTION
9-8-75	Before PLATT, J - Indictment filed ordered sealed by the Court.
	Bench Warrants ordered for defts.
9-9-75	Bench Warrants Issued
9-11-75	Before RAYFIEL, J - case called - Sealed indictment ordered
	opened by the Court - defts PALUMBO, LABRIOLA, CONCETTA KENNEDY
	and REMINICK present with attys - Defts arraigned and after being
	advised of their rights enter pleas of not guilty - defts
	CONTINO, MEMOLO & NAPOLITANO having been declared fugitives,
	Govt moves for bench warrants against these defts - Motion
	for Bench Warrants granted - Bail set at \$5,000 personal bond
	as to deft CONCETTA KENNEDY, LABRIOLA, \$25,000 surety- PALUMBO,
	\$10,000 surety and deft REMINICK \$2500 personal bond to be
	co-signed by his wife. Jane Doe amended to reflect true name

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A 2

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	CONCETTA KENNEDY and John Doe amended to reflect true name of WALTER REMINICK.		
9-11-75	Bench Warrants ret'd and filed - Executed as to depts JANE DOE true name CONCETTA KENNEDY and JAMES & THOMAS CONTINO, ROBERT NAPOLITANO & FRANK MEMOLO PAUL LABRIOLA.		
9-11-75	Notice of Appearance filed (LABRIOLA)		
9-11-75	Notice of Appearance filed (KENNEDY)		
9-11-75	Bench Warrants issued as to depts. JAMES & THOMAS CONTINO, ROBERT NAPOLITANO & FRANK MEMOLO.		
9/15/75	Petitions for writs of habeas corpus ad prosequendum filed (CONTINO, MEMOLO and JAMES & THOMAS CONTINO, ROBERT NAPOLITANO and MOGAVERA)		
9-15-75	Before COSTANTINO J - case called - depts SIERRA, MARY MAGLIONE present without atty - depts arraigned and the court enters a plea of not guilty on behalf of each deft - case adj'd to 9-26-75 for status report - deft NAPOLITANO & atty present - deft arraigned and enters a plea of not guilty - bail set at \$10,000.		
9/17/75	Notice of appearance filed (NAPOLITANO)		
9/18/75	Before COSTANTINO, J. - Case called - Depts Sullivan, James Contino and Palumbo present - with counsel - depts arraigned and enter pleas of not guilty - bail set at \$5,000.00 P.R. Bond for deft Sullivan, \$5,000.00 cash for deft Contino and \$5,000.00 cash for deft Palumbo - case adj'd to 9/26/75 for status report		
9/18/75	Notice of appearance filed (SULLIVAN and JAMES CONTINO)		
9-19-75	Writ ret'd and filed - Executed (Napolitan)		
9/19/75	Before COSTANTINO, J. - Case called - Oral Motion for Reduction of Bail argued - Bail reduced to \$1,000.00 Surety Bond		
9-22-75	Before COSTANTINO J - case called - depts & attys present - depts arraigned and each enter a plea of not guilty - bail set at \$1,500 for deft Contino: case adj'd to 9-26-75 for status report.		
9/23/75	Before COSTANTINO, J. - Case called - deft not present - counsel for deft Labriola present - motion by deft for reduction of bail granted - bail reduced to \$15,000.00 cash or surety		
9-24-75	Before COSTANTINO J - case called - deft Mogavero present without counsel - the court enters a plea of not guilty on his behalf after advising the deft of his rights - case adj'd to 9-25-75 at 10:00 am.		
9/26/75	Two (2) writs ret'd and filed - executed		
9/26/75	Copy of Order for Acceptance of Cash Bail filed (W. Palumbo)		
9-26-75	Before COSTANTINO J - case called - deft Mogavero & counsel present		

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CRIMINAL DOCKET

DATE	PROCEEDINGS
9-26-75	Before COSTANTINO J - case called - all defts & attys present - case adjd to Dec. 3, 1975 for trial - all motions by Oct. 31, 1975.
9-26-75	Before COSTANTINO J - case called - defts CONTINO & MEMOLO present - case set down for trial on Dec. 3, 1975 - all motions by 10-31-75. Court to assign counsel for deft THOMAS CONTINO.
9-29-75	Writ ret'd and filed - Executed (Frank Memolo)
9/30/75	75 M 1616, 1621 is inserted in CR file.
10/3/75	75 M 1678 is inserted in CR file. also 1674
10/6/75	75 M 1573, 1600 is inserted in CR file.
10-8-75	By COSTANTINO J - Order filed apptg counsel for deft MEMOLO
10/9/75	75 M 1640 inserted in CR file
10/10/75	By COSTANTINO J - Order appointing counsel filed (MARGARET SIERRA)
10/19/75	XX
10-22-75	Bench Warrant returned and filed - executed (Pecorara)
10-22-75	Before COSTANTINO J - case called - deft Pecorara present without attorney - deft arraigned - court enters a plea of not guilty on his behalf - bail set at \$5,000 surety or \$250 cash - bail limits not to exceed East of the Mississippi - case set down on Oct. 28, 1975 for all purposes.
10-22-75	By SCHIFFMAN, Mag - Order for acceptance of cash bail filed (ANTHONY PECORARA)
10-22-75	Bench Warrant ret'd and filed as to deft Napolitano - deft Bailed out October 7, 1975.
10/28/75	Before COSTANTINO J - Case called - Deft PECORARA present - case adjd to 11/6/75 at 10:00 A.M. for all purposes
11-6-75	Before COSTANTINO J - case called - deft Pecorara present without counsel - counsel for deft Contino present - counsel to be assigned for deft Pecorara - adjd to 12-3-75 for trial.
11-6-75	By COSTANTINO J - Order apptg counsel filed for deft Contino.
11/17/75	Bench warrant ret'd and filed - executed (CONTINI)
11-25-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (NAPOLITANO)
11-25-75	Writ Issued (NAPOLITANO)
12-3-75	Before Costantino J - case called & adjd to Jan 26, 1976 for trial.
12-5-75	Writ ret'd and filed - executed.
12/5/75	Before COSTANTINO J - Case called - deft and counsel present - deft PALUMBO after being advised of his rights by the court and on his own behalf enters a plea of guilty to count 1 - sentence adjd without date D.C. 103 Bail cont'd

DATE	PROCEEDINGS
12/12/75	Voucher for compensation of counsel filed (LABRIOLA)
12/12/75	Before COSTANTINO, J. - Case called - deft NAPOLITANO and counsel present deft after being advised of his rights by the court and on his own behalf enters a plea of guilty to count 1 - sentence adjd without date - deft in custody
12/23/75	Govt's memorandum of law filed
1-12-76	By COSTANTINO J - Order appointing counsel filed (deft Labriola)
1-9-76	Before COSTANTINO J - case called - deft Labriola present - court assigns Philip Peltz as counsel for the deft (Order signed) adjd to Jan. 26, 1976.
1-13-76	Before COSTANTINO J - case called - deft Joseph Mogavero present - without counsel - court to assign counsel for the deft.
1/14/76	Before COSTANTINO, J. - Case called - deft MOGAVERO not present - court assigns Joanna Seybert as counsel for deft - Order appointing counsel signed
1/20/76	Notice of motion for bill of particulars filed (PAUL LABRIOLA)
1/20/76	Before COSTANTINO, J. - Case called - deft and counsel present - deft arraigned and after being advised of his ^{her} rights by the court and on her behalf enters a plea of guilty to count 1 - deft consents to transfer of case from N.C. to E.D.N.Y. for pleading - consent signed - Order appointing Barry Krinsky as counsel for deft signed - bail contd - sentence adjd without date (KENNEDY)
1/21/76	Before COSTANTINO, J. - Case called - deft Memolo and counsel present - deft after being advised of his rights by the court and on his own behalf withdraws his plea of not guilty and enters a plea of guilty to count 1 - sentence adjd without date - bail contd
1-22-76	Before COSTANTINO, J. - Case called. Deft & counsel present. Deft Pecorara arraigned & after being advised of his rights & on his own behalf enters a plea of guilty to Count 1 of the indictment. Bail continued. Sentence adj'd without date. Deft & counsel sign rule 20's (consent to transfer esess from District of Rhode Island & Northern District of N.Y. to Eastern District of New York.
1/23/76	Before COSEANTINO, J. - Case called - Deft/and counsel present - Adjd to 1/26/76 for trial JAMES CONTINO
2/26/76	Before COSTANTINO, J. - Case called - defts and counsel present - deft Sullivan's motion to sever - granted - deft Labriola's motion to dismiss - decision reserved - deft James Contino's motion to dismiss - decision reserved - deft Labriola's motion for bill of particulars granted and denied as indicated on the record - case adjd to 1/29/76 at 10:00 A.M. for trial
1/26/76	Deft Sullivan's and J. Contino's motion to dismiss filed

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DATE	PROCEEDINGS
1/27/76	Writ retd and filed-executed(THOMAS CONTINO)
1-27-76	Notice of motion filed, ret Jan. 29, 1976, for dismissal the indictment, etc. (Mogavero)
1-28-76	Notice of motion filed for dismissal (deft Labriola) ret. Jan. 29, 1976.
1-28-76	Notice of Motion filed for dismissal (deft Contino) ret. Jan. 29, 1976.
1-28-76	Memorandum of Law filed in support of deft Labriola's motion to dismiss the indictment.
1/29/76	Before COSTANTINO,J.- Case called- defts and counsel present-gevt's motion for continuance to answer motion papers granted- all motions for parties to be submitted by 2/11/76-oral argument of motions on 2/13/76 at 10:00 A.M.- trial set for 2/23/76 at 10:00 A.M.
2-5-76	75 M 1826 inserted in C ^A file
2/5/76	Before COSTANTINO,J.- Case called- deft Kennedy and counsel present- deft signs waiver of indictment in rule 20 from D.N.Carolina- deft signs consent to transfer from D.Ma - case adjd without date
2-11-76	Before Costantino J - case called - adjd to 2-17-76 for trial.
2/13/76	Affidavit of Samuel Mayer filed
2/19/76	Before COSTANTINO,J.- Case called- deft and counsel not present- case adjd to 2/23/76 at 10:00 A.M. for pleading (KENNEDY)
2/23/76	Before COSTANTINO,J.- Case called- defts and counsel present- defts Maglione and Pecoraro after being advised of their rights by the court and on their own behalf enter pleas of guilty to count 1- bail contd sentence adjd without date- sentence as to deft Kennedy adjd to 3/12/7
2-27-76	Before COSTANTINO J - case called - sentence as to deft CONCETTA KENNEDY adjd to Mar. 12, 1976.Def. NAPO LITANO & counsel M.Ozer present - deft sentenced on count one to imprisonment for 4 years pursuant to 18:4208(a)(2) ;sentence to run concurrently with sentence imposed in 75 CR 713. Stay of surrender to 3 1-76.
2-27-76	Judgment & Commitment filed - certified copies to Marshal (NAPOLITANO)Deft PALUMBO & counsel Ira Leitel present - deft sentenced to imprisonment for 4 years on count one to a term of imprisonment for 4 years pursuant to 18:4208(a)(2) sentence to run concurrently with sentence in 75 CR 917 and 75 CR 903. Stay of surrender to Mar. 5, 1976 at 4:00 PM.
2-27-76	Judgments & Commitments filed for defts NAPOLITANO and PALUMBO. Certified copies to Marshal.

PROCEEDINGS

- /76 Certified copy of Judgment and Commitment ret'd and filed - deft delivered to MCC (NAPOLITANO)
- 3-5-76 Order releasing bail filed. (William Palumbo)
- 3-8-76 Voucher for compensation of counsel filed (William Palumbo)
- 3-9-76 Certified copy of Judgment & Commitment ret'd and filed
- Deft PALUMBO delivered to Warden, MCC, NY.
- 3-4-76 Before COSTANTINO J - case called - deft Remenick & counsel Ed Kelly of Legal Aid present - deft waives rights to speedy trial - adj'd without date.
- 3-12-76 Before COSTANTINO J - case called - deft CONCETTA KENNEDY & counsel Barry Krinsky present - deft sentenced under the Y.C.A. Imposition of sentence is suspended and the deft is placed on probation for 3 years.
- 3-12-76 Judgment & Order of probation filed - certified copies to Probation (KENNEDY)
- 3/16/76 Petition for writ of habeas corpus ad prosequendum filed - issued (MOGAVERO)
- 3-16-76 By COSTANTINO J - Order releasing bail filed (Robert Napolitano)
- 3/19/76 Voucher for compensation of counsel filed (NAPOLITANO)
- 3/19/76 Before COSTANTINO, J. - Case called - deft present without counsel - bail set at \$10,000.00 P.R. Bond - case adj'd to 4/30/76 at 10:00 A.M. (MEMOLO)
- 3-25-76 Petition for Writ of Habeas Corpus Ad Prosequendum filed (Labriola)
- Writ Issued.
- 3/26/76 Petition for writ of habeas corpus ad prosequendum filed - issued (CONTINO)
- 3-29-76 Before MISHLER, CH J - Superseding Indictment filed. (PAUL LABRIOLA, CONTINO, SIERRA & REMENICK.) Appendixes 1, 6, 10, 17 filed.
- 3-30-76 Before COSTANTINO J - case called - defts Labriola, Contino & Sierra present with atty Mr. Peltz - defts arraigned and each enter a plea of not guilty - all motions by 4-23-76 and trial set for 4-26-76. On motion of AUSA Katz to dismiss the indictment as to defts Labriola, James & Thomas Contino in 75 CR 659 is granted.
- 3-30-76 By COSTANTINO J - Order of dismissal filed (LABRIOLA, JAMES & THOMAS CONTINO) (on superseding indictment)
- 3-31-76 Writs returned and filed/executed as to Paul Labriola & Thomas Contino.
- 4-1-76 Writ ret'd and filed - executed (Mogavero)
- 4-6-76 Judgment & Commitment ret'd and filed - deft Napolitano del. to F.C.I. Sandstone, Minn.
- 4-6-76 Before COSTANTINO J - case called - deft REMENICK & atty EKelly present - deft arraigned and enters a plea of not guilty - adj'd to 4-26-76 for trial.

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DATE	PROCEEDINGS
4-7-76	Petition for Writ of Habeas Corpus Ad Prosequendum filed. Issued (Paul Labriola)
4-8-76	Petition for Writ of Habeas Corpus Ad Prosequendum filed. Issued (Frank Memolo)
4-9-76	76 M 602 (CRF) inserted in CR file.
4/14/76	Petition for writ of habeas corpus ad prosequendum filed- issued (CONTINO)
4/22/76	Notice of motion to dismiss, inspection, bill of particulars, etc. filed ret. 4/23/76 (LABRIOLA)
4/22/76	Writ ret'd and filed- executed (MEMOLO)
4/23/76	Before COSTANTINO, J.- Case called- deft PERCORARA and counsel present deft sentenced to imprisonment for a period of 4 years pursuant to T-18 U.S.C. Sec. 3651- deft to serve 6 months imprisonment every weekend commencing on 4/23/76 at 8:00 P.M. and terminating on 11/5/76 at 4:00 P.M.- execution of the remainder of sentence is suspended and the deft is placed on probation for 3½ years- sentence to run concurrently with sentence in 76CR77 and 76 CR 99.
4/23/76	Judgment and Commitment and Order of probation filed- certified copies to Probation and Marshal
4-26-76	xxxxxx Petition for writ of habeas corpus ad prosequendum filed (Labriola) Writ Issued
4-26-76	Writ ret'd and filed unexecuted (Labriola)
4/23/76	Before COSTANTINO, J.- Case called- Defts not present-Counsel for Defts Labriola, Winnick and Contino present-Deft Labriola's motion to sever, etc. -Denied-Deft Labriola's motion for a Bill of Particulars, etc. -Motion granted- and denied in part-Adj'd to 4/29/76 for trial
4-27-76	Govts supplementary Memorandum of Law filed.
4-28-76	Judgment & Commitment ret'd and filed -deft Pecorara delivered to Warden, MCC, NY.
4-28-76	Affidavit of Philip Peltz, Esq. filed (atty for deft Labriola)
4/29/76	Before COSTANTINO, J.- Case called- defts and counsel present- trial ordered and begun- jurors selected and sworn-case adj'd without date for trial
5-4-76	Govts Motion to amend the Indictment filed; Govts Memorandum of Law filed-Admissibility of co-conspirators statements filed; Govts Memorandum of Law Admissibility of evidence of prior Similar Acts by defts filed; and Govts Memorandum of Law in support of motion to amend the indictment filed.

DATE	PROCEEDINGS
5/4/76	Notice of motion to dismiss filed(LABRIOLA)
5-4-76	By COSTANTINO J - Order filed that John Keeney, an investigator associated with the Federal Defender Services Unit, Legal Aid Society, be permitted to visit and interview JOYCE KENNEDY at the Metropolitan Correction Center or any other place of incarceration.
5-5-76	Writ ret'd and filed - executed (Labriola)
5-6-76	Before COSTANTINO J - case called - defts & attys present - Jurors #5, 9 and 11 are excused and replaced by Alt. Jurors # 1, 2 & 3 - adjd to May 12, 1976 for trial
5-6-76	By COSTANTINO J - Order releasing bail filed (Pecorara)
5/7/76	Before COSTANTINO, J. - Case called - sentence adjd to 6/4/76(MEMOLO)
5-11-76	Govts Memorandum of Law filed in answer to defts motion to dismiss the indictment for denial of his speedy trial rights (received from Chambers and ret'd as directed)
5-12-76	Notice of motion filed for dismissing the indictment (Thomas Contino)
5/12-76	Before COSTANTINO J - case called - deft Sierra & counsel P. Brown present - deft having been advised of her rights and on her own behalf withdraws her plea of not guilty and enters a plea of guilty to count 1 - deft also advised of the Y.C.A. Sentence adjd without date.
5-12-76	Deft's memorandum in support of motion to dismiss indictment filed.
5-14-76	Before COSTANTINO J - case called - deft MAGLIONE & counsel F. Geoly present. Deft sentenced for a period of 5 years to serve 2 months and balance on probation pursuant to 18:3651 - sentence to run concurrently with 76 CR 115 and 76 CR 31. Order apptg counsel filed (Maglione)
5-14-76	Judgment and commitment and order of probation filed - certified copies to Marshal and Probation (MAGLIONE)
5/14/76	Before COSTANTINO, J. - Case called - defts and and counsel present - case adjd to 6/4/76 for status report - deft Contino's motion to dismiss argued - decision reserved
5/19/76	Certified copy of Judgment and Commitment ret'd and filed - deft delivered to MCC(MAGLIONE)
5-24-76	Voucher for compensation of atty filed (Frank Geoly, Esq.)
6/1/76	Voucher for compensation of counsel filed(PECORARA) ^{9-11-75.} and order apptg counsel
6-4-76	Before COSTANTINO - case called - adjd to June 18, 1976 for status report
6-4-76	Before COSTANTINO J - case called - deft Memolo present - sentence adjd to 6-18-76
5-9-76	Voucher for compensation of atty filed (Paul
6/11/76	Notice of motion for reduction of sentence filed ret. 6/24/76(PALIMBO)

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DATE	PROCEEDINGS
11-76	Before COSTANTINO J - case called - Deft MOGAVERO & counsel J. Seybert present - On motion of AUSA M.Katz the Indictment is dismissed as to deft MOGAVERO.
6-11-76	By COSTANTINO J - Order of dismissal filed (MOGAVERO)
6-18-76	Before COSTANTINO, J.- Case called for sent for deft MEMOLO and adjd to 9-27-76 and adjd to 9-27-76 for status report
6-24-76	Before COSTANTINO, J. - Case called. Motion for reduction of sentence submitted. Decision reserved.
6-28-76	By COSTANTINO J - Order filed extending bail limits as to deft CONTINO to include New Orleans for the period June 24, 1976 through August 1, 1976; it is further Order, that the deft shall at all times provide his attorney, Steven J. Hyman with the address and telephone number in New Orleans where the deft can be reached.
6-28-76	By COSTANTINO J -Memorandum and order filed denying motion for reduction of sentence (William Palumbo)
6-29-76	Before COSTANTINO J - case called - deft Davis & atty R. K. K. present - deft arraigned and having been advised of his rights
6-29-76	Order signed and ordered sealed by the court
6-29-76	Before COSTANTINO J - case called - deft L. BRIOLA PRESENT & counsel Philip Peltz - hearing on bail application adjd to 7-7-76
6-29-76	By COSTANTINO J - order filed that the deft Joseph Mogavera be escorted to the Romanelli Funeral Home from MCC by U.S. Marshal on July 1, 1976 no later than 7 PM and the he be allowed to attend services for his mother and that he be ret'd to the MCC after 10 PM that same evening, etc.
6-30-76	Before COSTANTINO J - case called - deft Labriola & counsel present - hearing ordered and begun (bail application) motion argued - decision reserved hearing concluded - motion denied - Order signed - Minutes Oct. 1974 recvd in evid. w as Govt. Ex-3.
7-6-76	By COSTANTINO, J. - Voucher for compensation of counsel filed. (Mogavero).
7-7-76	Notice of appearance for Joseph Mogavera filed.
7-8-76	Before COSTANTINO J - case called - deft Davis & atty R. K. K. present - deft arraigned and having been advised of his rights
7-8-76	Order signed and ordered sealed by the court
9/27/76	Before COSTANTINO, J.- Case called and adjd to 11/12/76 for status report. (J. PAUL LABRIOLA).

DATE	PROCEEDINGS
9/27/76	Before COSTANTINO, J. - Case called. Sentence adjd to 11/19/76. (FRANK MELO)
10/1/76	Before COSTANTINO, J. - Case called - Deft Margaret Sierra present with counsel Case adjd to 11-19-76 at request of gov't for sentence.
11-1-76	Motion for Dismissal of Indictment - filed. (Paul Labriola) forwarded to chambers.
11-4-76	By COSTANTINO, J. - Order filed that the U.S. Attorney (Strike Force) is ordered to respond to motion for dismissal of the indictment (Labriola) within 30 days, etc. (Copy forwarded to Strike Force)
11-9-76	By COSTANTINO, J. - Memorandum and order filed denying motion of deft PALUMBO for reduction of sentence imposed.
11/12/76	Before COSTANTINO, J. - Case called. Deft and counsel present. Case adjd to 12/10/76 for status report (PAUL LABRIOLA). 11/1
11-19-76	Before Costantino, J. - Case Called. Deft. Sierra & Counsel present. Deft. sentenced for a period of 5 years ^{on count one of both indictments} to serve 30 days pursuant to T-18, U.S.C. Section 3651 and balance on probation. On motion of special Assistant Katz moves to dismiss remaining counts in indictments 75 CR 659 and 76 CR 366. Deft. to surrender at 4:00 P.M. 11-19-76.
1-19-76	Judgment and Commitment filed. Certified Copies to Marshal and Probation.
11-19-76	Before Costantino J - case called - deft REMINICK & atty E. Kelly present - adjd to 12-14-76 T 12-
11-19-76	Before Costantino J - case called - deft MEMOLO & atty not present - sentence adjd to 12-20-76
11/24/76	Voucher for compensation for appointment of counsel (appointed - 11/24/75) filed. (KENNEDY).
11-29-76	Stenographers transcript filed dated 2-23-76 (Kennedy)
12-3-76	Government's Response filed and forwarded to Chambers. (Paul Labriola)
12-6-76	Judgment and commitment retd and filed - deft Sierra del. to Warden, MCC. NY Deft has not prior jail time credit prior to being remanded 11-19-76 to start federal sentence.
12-10-76	Before COSTANTINO, J. - Case called & adj'd to 1-28-77 for status report (Paul Labriola).
2-14-76	Before Costantino, J. - Case Called. Adj'd. to 1-20-77 for Report. (REMINICK)
2-14-76	Amended Sentence for defendant Margaret Sierra to read: five years imprisonment on count one (1) - to serve 30 days pursuant to T-18, U.S.C., Section 3651 and execution of remainder of sentence is continued.

CRIMINAL DOCKET

75CR 659

DATE

PROCEEDINGS

10

continuation.

suspended and defendant is placed on probation for the balance of the sentence with Special Condition being to remove herself from associating with past criminals and to stop involvement with bank notes, bad checks, etc. On motion of Special Attorney, Katz, the underlying indictment and all remaining counts in the superseding indictment are dismissed. Sentence is to run concurrently with sentence on 76-CR 366. Defendant to surrender at 4:00 P.M. 11-19-76

12-14-76 Amended Judgment and Commitment filed. Certified Copies to Marshal and Probation.

12-15-76 Voucher for Compensation of Counsel filed. (MARGARET SIERRA)

12-20-76 Before Costantino, J.- Case Called and sentence adjd. to 1-28-77. (FRANK MEMOLO)

12-21-76 Certified Copy of Judgment and Commitment (Amended) returned and filed from Marshal. Copies of Amended Judgment and Commitment to M.C.C. December 20, 1976. (MARGARET SIERRA)

12-21-76 Certified Copy of Amended Judgment and Commitment returned and filed from Marshal. Copies of Amended Judgment and Commitment to M.C.C. December 13, 1976. (MARGARET SIERRA)

1-20-77 Before COSTANTINO J - case called - deft REMINICK not present - case adjd to Mar. 31, 1977.

1.28.77 Before Costantino, J.- Case Called. Deft. not present. Sentence adjd. to 2.11.77. (FRANK MEMOLO)

1.28.77 Before Costantino, J.- Case Called. Adj. to 2.25.77 for Report. (PAUL LABRIOLA)

2.11.77 Before Costantino, J.- Case Called. Sentence adjd. to 3.9.77. (MEMOLO)

3.1.77 Voucher for Compensation for Counsel filed and forwarded to Washington for Payment. (ANTHONY PECORARO)

1/9/77 Before COSTANTINO, J.- Case called. On consent of Special Asst. Greenidge sentence adjd to 4/1/77. (FRANK MEMOLO).

3/24/77 Stenographers transcript dtd 3/20/76 filed. (LABRIOLA, CONTINO, SIERRA, CONTINO AND REMENICK)

3-25-77 Transcript filed dated June 18, 1976.

3.28.77 Stenographer's Transcript dated December 10, 1976 filed. (PAUL LABRIOLA)

3/28/77 By COSTANTINO, J. - Writ issued. (PAUL LABRIOLA).

3.28.77 Stenographer's Transcript dated April 29, 1976 filed. (PAUL LABRIOLA et al)

3-30-77 Before Costantino J - case called - deft Labriola & counsel P. Peltz present - set down for hearing 4-29-77; all papers by 4-14-77. 3-15-77

4-29-77

75CR 659

At 11

DATE	PROCEEDINGS
3/31/77	Stenographers transcript dated 11/12/76 filed. (PAUL LABRIOLA)
4.1.77	Writ of Habeas Corpus Ad Prosequendum returned and filed. (Executed)
4-1-77	Before Costantino J - case called - deft present without atty (FRANK MEMOLO) adjd to 4-29-77 on conse.t
4/12/77	By COSTANTINO, J. - Order filed denying defts motion for a reduction of sentence. (ROBERT NAPOLITANO)
4/19/77	Govt's memo of law filed. Forward to the judge.JLJ
4-26-77	Defts Memorandum of Law filed (PAUL LABRIOLA)
4-29-77	Before Costantino J - case called - deft Memolo & counsel Richard Rosenkranz present. sentence adjd xto May 13.1977 rs
5.2.77	By Costantino, J.- Writ of Habas Corpus Issued.
5-4-77	Before COSTANTINO J - case called - deft Labriola and counsel (PAUL LABRIOLA) Philip Peltz present - motion to dismiss the indictment - motion argued - decision reserved. gp
5.5.77	Writ of Habeas Corpus Ad Prosequendum returned and filed from Marshal. Executed. (PAUL LABRIOLA) gp
5.6.77	Voucher for Compensation for Counsel forwarded to the Court of Appeals for Authorization. (V# 218606) (PAUL LABRIOLA) gp
5-13-77	Before COSTANTINO J - case called - adjd to June 2, 1977 (Memolo) for sentencing.
5-18-77	Transcript filed dated May 12, 1976.
5-25-77	Voucher forwarded with affidavit in support thereof for deft LABRIOLA to the court of appeals for approval (over amount etc.)
6-2-77	Before Costantino J - case called - deft Memolo & atty Richard Rosenkrantz present - sentence adjd to July 13,1977.
6-7-77	Voucher for compensation of counsel Philip Peltz filed and forwarded for payment.(Labriola)
6-28-77	By Costantino J - Memorandum and Order filed dismissing the indictments against defts Labriola and Thomas Contino. Defts Labriola's bail is hereby exonerated. (Original indictment filed 9-8-75)
7/22/77	Before Costantino, J-case called-deft & atty not present-sentence adjd to 7/29/77.jlj Frank Memalo
7/22/77	Before Costantino, J-case called deft & atty present-adjd to 9/30/77 for report.jlj Walter Reminick. 7/22/77 T
7-26-77	Govts Notice of appeal filed (defts Labriola and Contino) from the order of the District Court entered on June 28, 1977 dismissing the indictment against both defts. Docket entries and duplicate of Notice mailed/the court of appeals.

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

PAUL LABRIOLA et al.

12

75 659 ALL
Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
7.26.77	(Document No.) Stenographer's Transcript dated May 6th, 1976 filed. (PAUL LABRIOLA, MARGARET SIERRA, WALTER REMENICK, THOMAS CONTINO)				gp
7.28.77	Stenographer's Transcript dated April 23rd, 1976 filed. (PAUL LABRIOLA, THOMAS CONTINO, WALTER REMENICK)				gp
7-29-77	Before COSTANTINO J - case called - deft Memolo & atty Richard Rosenkranz present - sentence adjd to 9-16-77 ; all papers by 9-6-77.				
8/9/77	Copy of letter of Philip Peltz to Costantino, J dtd 4/19/77 filed re atty's withdrawal from representing deft.jlj				
8/9/77	Deft's memo of law filed.jlj				
8/9/77	Letter of Bernard Fried to Costantino, J dtd 6/1/77 filed re motions made by deft referring to waiver of speedy trial etc.jlj				
8/9/77	Letter of Philip Peltz to Costantino, J dtd 6/7/77 filed re govt's letter dtd 6/1/77 filed.jlj				
8/9/77	Sten's transcript dtd 5/4/77 filed.jlj				
8-10-77	Scheduling order filed that the record on appeal be docketed on or before 8-15-77. (Labriola & Contino)				
8/12/77	Notice of motion for an order permitting the withdrawal of the plea of guilty entered on 1/21/76 filed.jlj Frank Memolo.				
8-15-77	Record on appeal certified and handed to A.Schall, Asst US Atty, for delivery to the c of a				
9.12.77	Voucher for Compensation in excess of \$1,000.00 mailed to the Court of Appeals with Affidavit in Support for higher authorization (V# 218307) (THOMAS CONTINO)				gp
9.14.77	Acknowledgment filed received from the Court of Appeals for the Record on Appeal. (PAUL LABRIOLA and THOMAS CONTINO)				gp
9-19-77 k	Before Costantino J - case called & s nce adjd to Nov. 30, 1977 (Memolo)				

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

13

UNITED STATES OF AMERICA

SUPERSEDING
INDICTMENT
18 U.S.C. § 495 & 2

FILED
U.S. DISTRICT COURT E.D. NY
MAR 8 1976

PAUL LABRIOLA

THOMAS CONTINO

MARGARET SIERRA

WALTER REMENICK

Defendants

75-CR-657 (S)

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 4th day of June, 1974, in the Eastern District of New York and elsewhere, PAUL LABRIOLA, THOMAS CONTINO, MARGARET SIERRA, the defendants herein, and Robert Napolitano and Carol Santiago named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited the endorsement of the payee on the two (2) United States Savings Bonds and United States Savings Notes, Serial numbers of which are set forth below and copies of which are set forth in Appendix 1 to wit the words "Kelly Christine Evans " on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

REGISTERED OWNER

SERIAL NUMBER

NAME OF ENDORSEMENT

Kelly Christine Evans
Kelly Christine Evans

D94426996E
D100364097E

Kelly Christine Evans
Kelly Christine Evans

COUNT TWO

14

On or about the 4th day of June , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, THOMAS CONTINO, and MARGARET SIERRA, the defendants herein, and ROBERT NAPOLITANO and CAROL SANTIAGO named as co-accomplices but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 1 , to wit, the words "Kelly Christine Evans" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT THREE

On or about the 10th day of June , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA, and THOMAS CONTINO , the defendants herein, and Carol Santiago named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the seventeen (17) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 2 to wit the words "Marilyn Bunshaft" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT FOUR

On or about the 10th day of June , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, and MARGARET SIERRA and THOMAS CONTINO the defendants herein, and Carol Santiago named as co-accomplices but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 2, to wit, the words "Marilyn Bunshaft" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT FIVE

On or about the 20th day of June , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, THOMAS CONTINO, and MARGARET SIERRA, the defendants herein, and Carol Santiago and Robert Napolitano named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the seventy-three (73) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 3 to wit the words "Jeanette Popovich" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT SIX

On or about the 20th day of June , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, THOMAS CONTINO, and MARGARET SIERRA the defendants herein, and Carol Santiago and Robert Napolitano named as co-accomplices but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 3 , to wit, the words "Jeanette Popovich" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT SEVEN

On or about the 27th day of June , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, THOMAS CONTINO , the defendants herein, and Carol Santiago, and Neal Wasserfall named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the thirteen (13) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 4 to wit the words "Virginia L. Brown" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT EIGHT

On or about the 27th day of June , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, THOMAS CONTINO, the defendants herein, and Carol Santiago, Neal Wasserfall named as co-accomplices but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 4 , to wit, the words "Virginia L. Brown" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT NINE

On or about the 20th day of August , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, and THOMAS CONTINO , the defendants herein, and Carol Santiago named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the forty-eight (48) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 5 to wit the words "Armentha Almond" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TEN

On or about the 2nd day of August , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, THOMAS CONTINO
 the defendants herein, and
 Carol Santiago named as co-accomplices
 but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 5, to wit, the words "Armentha Almond" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT ELEVEN

On or about the 19th day of September , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA
 , the defendants herein, and
 Rose Maria Kourentianos, Neal Wasserfall named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the one hundred and thirteen (113) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 6 to wit the words "Yolanda Hales" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWELVE

19

On or about the 19th day of September , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA

the defendant herein, and
Rose Marie Koulentianes, Neal Wasserfall named as co-accomplices
but not as defendants, unlawfully, wilfully and knowingly and with intent
to defraud the United States did utter and publish as true, false, forged
and counterfeited writings; namely the endorsement of the payee on
United States Savings Bonds and United States Savings Notes, copies of
which are set forth in Appendix 6 , to wit, the words "Yolanda Hales"

on the back of each of the said bonds and notes, knowing
the same to be false, forged and counterfeited, the bonds and notes being
a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT THIRTEEN

On or about the 11th day of December , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA,

, the defendant herein, and Rose Marie
Koulentianes, Robert Napolitano, named as co-accomplices but
and Mary Magliene
not as defendants herein, unlawfully, wilfully and knowingly falsely made,
forged and counterfeited and endorsement of the payee on the sixty-four
(64) United States Savings Bonds and United States Savings Notes, copies
of which are set forth in Appendix 7 to wit the words "Mary Cresci"

on the back of each of the said
bonds and notes, for the purpose of obtaining or receiving, or of enabling
any other person, either directly or indirectly, to obtain or receive
from the United States or any officers or agents thereof, any sum of
money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT FOURTEEN

On or about the 11th day of December , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA,

the defendant herein, and

Rose Marie Koulentianos, Robert Napolitano named as co-accomplices and Mary Magliene but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 7, to wit, the words "Mary Cresci"

on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT FIFTEEN

On or about the 19th day of December , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA,

the defendant herein, and

Rose Marie Koulentianos, Robert Napolitano named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the thirty-four (34) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 8 to wit the words "Antoinette Ruggieri"

on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT SIXTEEN

A 21 3

On or about the 19th day of December , 1974 in the Eastern District of New York and elsewhere PAUL LABRIOLA, the defendant herein, and Rose Marie Koulentianos, Robert Napolitano named as co-accomplices but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 8 , to wit, the words "Antoinette Ruggieri" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT SEVENTEEN

On or about the 10th day of January , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, THOMAS CONTINO, the defendants herein, and Richard Sullivan, William Palumbo named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the eight (8) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 9 to wit the words "Robert Henry" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT EIGHTEEN

On or about the 10th day of January , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, THOMAS CONTINO the defendants herein, and Richard Sullivan, William Palumbo named as co-accomplices but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 9, to wit, the words "Robert Henry" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT NINETEEN

On or about the 31st day of March , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA, the defendants herein, and Frank Memolo, Rose Marie Koulentianos, Robert Napolitano named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the ten (10) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 10 to wit the words "Jeanne Damin" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY

23

On or about the 31st day of March , 1975 in the Eastern District of New York and elsewhere PAUL LARRIOLA, MARGARET SIERRA the defendants herein, and Rose Maria Koulantianes, Frank Memolo, and named as co-accomplices Robert Napolitano but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 10 to wit the words "Je Anne Damin" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY-ONE

On or about the 2 & 3 days of April , 1975 in the Eastern District of New York and elsewhere PAUL LARRIOLA, MARGARET SIERRA , the defendants herein, and Rose Maria Koulantianes, Frank Memolo and Robert named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the twenty-seven (27) United States Savings Bonds and United States Savings Notes, copies of which are set forth in appendix 11 to wit the words "Andrea Damin" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY-TWO

On or about the 2 & 3 days of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA the defendants herein, and Rose Marie Koulentianes, Frank Memolo and named as co-accomplices Robert Napolitano but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 11 , to wit, the words "Andrea Damin"

on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY-THREE

On or about the 4th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA , the defendants herein, and Rose Marie Koulentianes, Frank Memolo named as co-accomplices but and Robert Napolitano not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the thirty-four (34) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 12 to wit the words "Andrea Damin"

on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY-FOUR

On or about the 4th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET STIERA

the defendants herein, and

Rose Marie Koulentianos, Frank Memolo and named as co-accomplices
Robert Napolitano
but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 12 , to wit, the words "Andrea Damin"

on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY-FIVE

On or about the 7th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET STIERA

, the defendants herein, and Rose Marie

Koulentianos, Frank Memolo, and named as co-accomplices but
Robert Napolitano
not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the thirty-nine (39) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 13 to wit the words "Andrea Damin"

on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY-SIX

On or about the 7th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA the defendants herein, and Rose Marie Koulentianes, Frank Memolo and named as co-accomplices Robert Napolitano but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 13 , to wit, the words "Andr a Damin" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY-SEVEN

On or about the 9th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA , the defendants herein, and Rose Marie Koulentianes, Frank Memolo and named as co-accomplices but Robert Napolitano not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the twenty-six (26) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 14 to wit the words "Virginia Damin" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY-EIGHT

On or about the 9th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA

the defendants herein, and

Rose Marie Koulentianos, Frank Memolo and named as co-accomplices
Robert Napolitano
but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 14 , to wit, the words "Virginia Damin"

on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT TWENTY-NINE

On or about the 10th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA

, the defendants herein, and Rose Marie

Koulentianos, Frank Memolo, and named as co-accomplices but
Robert Napolitano
not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the nineteen (19) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 15 to wit the words "Virginia Damin"

on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT THIRTY

On or about the 10th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA the defendants herein, and Rose Marie Koulentianos, Frank Memolo and named as co-accomplices Robert Napolitano but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 15, to wit, the words "Virginia Damin" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT THIRTY-ONE

On or about the 15th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA , the defendants herein, and Rose Marie Koulentianos, Frank Memolo, and named as co-accomplices but Robert Napolitano not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the thirty (30) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 16 to wit the words "Virginia Damin" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

A1 29

COUNT THIRTY-TWO

On or about the 15th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, MARGARET SIERRA

the defendants herein, and
Rose Marie Koulentianos, Frank Mamolo and named as co-accomplices
Robert Napolitano
but not as defendants, unlawfully, wilfully and knowingly and with intent
to defraud the United States did utter and publish as true, false, forged
and counterfeited writings; namely the endorsement of the payee on
United States Savings Bonds and United States Savings Notes, copies of
which are set forth in Appendix 16 , to wit, the words "Damin"

on the back of each of the said bonds and notes, knowing
the same to be false, forged and counterfeited, the bonds and notes being
a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT THIRTY-THREE

On or about the 17th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, WALTER REMENICK

, the defendants herein, and
Michael Mustakas, Robert Napolitano named as co-accomplices but
not as defendants herein, unlawfully, wilfully and knowingly falsely made,
forged and counterfeited and endorsement of the payee on the twenty-five
(25) United States Savings Bonds and United States Savings Notes, copies
of which are set forth in Appendix 17 to wit the words "Dario Gonzalez"

on the back of each of the said
bonds and notes, for the purpose of obtaining or receiving, or of enabling
any other person, either directly or indirectly, to obtain or receive
from the United States or any officers or agents thereof, any sum of
money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT THIRTY-FOUR

On or about the 7th day of April , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, WALTER REZENICK, the defendants herein, and Michael Mustakas, Robert Napolitano named as co-accomplices but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 17 , to wit, the words "Dario Gonzalez" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT THIRTY-FIVE

On or about the 15th day of May , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, WALTER REZENICK , the defendants herein, and Michael Mustakas and Robert Napolitano named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the twenty-five (25) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 18 to wit the words "Joseph Damin" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT THIRTY-SIX

On or about the 15th day of May , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, WALTER REMENICK the defendants herein, and Michael Mustakas, Robert Napolitano named as co-accomplices but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 18 , to wit, the words "Joseph Damin" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

COUNT THIRTY-SEVEN

On or about the 21st day of May , 1975 in the Eastern District of New York and elsewhere PAUL LABRIOLA, WALTER REMENICK , the defendants herein, and Michael Mustakas, Robert Napolitano named as co-accomplices but not as defendants herein, unlawfully, wilfully and knowingly falsely made, forged and counterfeited and endorsement of the payee on the twelve (12) United States Savings Bonds and United States Savings Notes, copies of which are set forth in Appendix 19 to wit the words "Joseph Damin" on the back of each of the said bonds and notes, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money, each bond and note being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

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COUNT THIRTY-EIGHT

On or about the 21st day of May, 1975, in the Eastern District of New York and elsewhere PAUL LABRIOLA, WALTER REMENICK, the defendants herein, and Michael Mustakas, Robert Napolitano named as co-accomplices but not as defendants, unlawfully, wilfully and knowingly and with intent to defraud the United States did utter and publish as true, false, forged and counterfeited writings; namely the endorsement of the payee on United States Savings Bonds and United States Savings Notes, copies of which are set forth in Apprndix 19 to wit, the words "Joseph Damin" on the back of each of the said bonds and notes, knowing the same to be false, forged and counterfeited, the bonds and notes being a genuine obligation of the United States.

(Title 18, United States Code, Sections 495 and 2)

A TRUE BILL

Michael W. Conaghan, Jr.

ACTING FORELORD
MBN

David G. Trager

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

000

33

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED

THE UNITED STATES

75-CR-659

v.

MEMORANDUM and
ORDER

PAUL LABRIOLA and THOMAS CONTINO,

JUN 28 1977

Defendants.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

COSTANTINO, D.J.

JUN 28 1977 ★
TIME A.M. _____
P.M. _____

This is a motion by defendants Labriola and Contino to dismiss the indictment against them on the grounds that the government violated the Interstate Agreement on Detainers, 18 U.S.C. App. (Pub. L. 91-538, §§ 1-8, Dec. 9, 1970, 84 Stat. 1397-1403). There is no dispute that each defendant, while serving a state sentence, was brought into federal court by way of writ of habeas corpus ad prosequendum, then returned to state custody without being tried. The United States Court of Appeals for the Second Circuit, in United States v. Mauro, 544 F.2d 588 (2d Cir. 1976) held that in such a situation, the federal indictment must be dismissed with prejudice.

The motions in this case were originally made

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in April and May, 1976. On May 12, 1976, the parties requested that this court reserve decision on the motions until such time as the Court of Appeals decided Mauro, which was then pending. That decision was handed down on October 26, 1976. The government filed a petition with the Court of Appeals for rehearing en banc, and again requested that this court reserve decision on the within motions until that petition had been acted upon. Rehearing was denied by the Court of Appeals on March 15, 1977.

The government concedes that both Labriola and Contino fall within the factual ambit of Mauro. Nonetheless, it argues that the indictment in this case should not be dismissed because Mauro should not be applied retroactively. This court need not decide the retroactivity question, since it finds that the government is equitably estopped from raising the issue in the context of the present case.

It is apparent from a reading of the transcript of the May 12, 1976 oral argument that all parties understood that this court intended that the Court of Appeals' ruling in Mauro would be dispositive of these motions. That intention was made abundantly clear when the court,

in acceding to the parties' request to reserve decision until the Court of Appeals decided Mauro, stated that by doing so "I would know exactly whether or not you should continue or whether it [the indictment] should be dismissed." (Tr., May 12, 1976, p. 13). The government stated that it had no objection to such a procedure, and it is now bound by that statement. Cf. United States v. Alessi, 536 F.2d 978, 981 (2d Cir. 1976), cert. denied, ___ U.S. ___, 97 S.Ct. 384 (1976).

In addition, the defendants consented on May 12, 1976 to waive their speedy trial rights pending a decision by the Court of Appeals in Mauro. That waiver was predicated upon the understanding that the decision in Mauro would control the determination of the within motions (see Tr., May 12, 1976, pp. 16-17). The court agrees with defendant Contino that to allow the government to make its retroactivity argument after the lengthy delay involved in this case, particularly where the delay was for the specific purpose of awaiting the Court of Appeals decision in Mauro, would be unconscionable and would cast grave doubt on the validity of the defendants' waiver of their rights under the Sixth Amendment and the Speedy Trial Act, 18 U.S.C. § 3161 et seq. (See Defendant Contino's Memo-

random of Law, pp. 5-6).

A' 36 ?

In light of the foregoing discussion, and without deciding the broad question of whether Mauro is to be applied retroactively, the court finds that Mauro must control the disposition of these motions. Accordingly, the indictment against defendants Labriola and Contino must be, and is, dismissed. Defendant Labriola's bail is hereby exonerated. So ordered.



U. S. D. J.

1037

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

PAUL LABRIOLA and THOMAS CONTINO

Defendants

FILED

IN CLERK'S OFFICE

U. S. DISTRICT COURT E.D. N.Y.

NOTICE OF APPEAL

75 CR 659 (s)

★ X JUL 26 1977 ★

S I R S :

TIME A.M. _____

P.M. _____

PLEASE TAKE NOTICE that the United States of America hereby appeals to the United States Court of Appeals for the Second Circuit from the order of the United States District Court for the Eastern District of New York (Constantino, J.) entered on June 28, 1977, which order dismissed the indictment against the defendants Labriola and Contino.

Dated: Brooklyn, New York
July 26, 1977

Yours very truly,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for United States of America
225 Cadman Plaza East
Brooklyn, New York 11201

By: Bernard J. Fried

BERNARD J. FRIED
Assistant U.S. Attorney
Chief, Appeals Division

TO: CLERK
United States District Court
Eastern District of New York

Philip Peltz, Esq.
32 Court Street
Brooklyn, N.Y. 11201

Steven Hyman, Esq.
370 Lexington Ave.
New York, New York

32

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 38

UNITED STATES OF AMERICA

-vs-

THOMAS CONTINO

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.
★ MAR 26 1976 ★

PETITION FOR A WRIT OF
HABEAS CORPUS AD PROSEQUENDUM

No. 75 CR 639

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK:

The petition of MARSHA KATZ Special Attorney for the Eastern
District of New York, respectfully shows to this Court that THOMAS CONTINO
now being detained in RIXERS ISLAND, RIXERS ISLAND, N.Y.
is charged, by an indictment filed against him in the Eastern District of New York,
with violation of Title 18 United States Code, Section(e) 495

It is necessary that the said defendant THOMAS CONTINO be brought
to the United States District Court for the Eastern District of New York for trial
before said United States District Court for the Eastern District of New York on
the charges now pending against him.

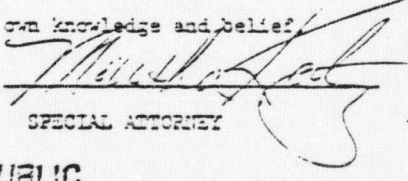
WHEREFORE, your petitioner prays that a Writ of Habeas Corpus ad Prosequendum
issue in this behalf directing that the said THOMAS CONTINO be produced
at the time and place set forth in said Writ, in civilian clothes, and that, after
the said THOMAS CONTINO shall have appeared in pursuance of said
Writ, and at the termination of the proceedings in the said United States District
Court for the Eastern District of New York on that particular day, he be returned
immediately to the custody of the Warden, RIXERS ISLAND, RIXERS ISLAND, N.Y.
under safe and secure conduct.

Dated: Brooklyn, NY
March 26, 1976


SPECIAL ATTORNEY

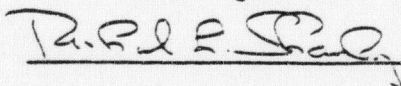
EASTERN DISTRICT OF NEW YORK, SS:

MARSHA KATZ being duly sworn, says that he is the petitioner above
named; that he had read the foregoing petition by him subscribed and knows the
contents thereof; that the same are true of his own knowledge and belief.


SPECIAL ATTORNEY

Sworn to before me this 26th
day of March 1976

NOTARY PUBLIC
STATE OF N.Y. 30-3610090
QUALIFIED NASSAU
TERM EXPIRES 3-30 77



7

A 39

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO THE WARDEN, RIXERS ISLAND, RIXERS ISLAND, NEW YORK

AND/OR TO THE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF NEW YORK, AND/OR TO ANY OF HIS DEPUTIES, AND/OR TO ANY UNITED STATES MARSHAL

IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

GREETINGS:

MAR 31 1976

MAR 31 1976

YOU ARE HEREBY COMMANDED to have the body of THOMAS CONTINO
now detained under your custody, as it is said, under safe and secure conduct,
in civilian clothes, before the United States District Court for the Eastern District
of New York, at the United States Courthouse, in such courtroom as shall be designated,
in the Borough of Brooklyn, City, State and Eastern District of New York, on the 30th
day of MARCH at 10 o'clock in the fore noon of that day, for
trial before said United States District Court for the Eastern District of New
York upon an indictment filed in said Eastern District of New York against the
said THOMAS CONTINO charging him with violation of Title 18
United States Code, Section(x)495 and, at the termination of the proceedings
in the said United States District Court on that particular day, that you return
him forthwith to the Warden, RIXERS ISLAND, RIXERS ISLAND, N.Y.
under safe and secure conduct.

LET THE ABOVE WRIT ISSUE.

Dated: Brooklyn, NY

MARCH 26, 1976

UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Clerk USDC DEPT

By: Deputy Clerk

8
X

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York, _____, 19____

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered in on the ____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,
Dated: Brooklyn, New York, _____, 19____

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

Criminal Action No. 75 CR 659

UNITED STATES DISTRICT COURT
Eastern District of New York

UNITED STATES OF AMERICA

—Against—

THOMAS CONTINO

WRIT FOR HABEAS CORPUS AD
PROSEQUENDUM

DAVID C. TRAGER

United States Attorney,
Attorney for ---U.S.A.E.D.N.Y.---
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within _____
is hereby admitted.

Dated: _____, 19____

Attorney for _____

Marsha Katz, 596-3761

Executed this writ as commanded herein

Frank C. Quinn

United States Marshal, E. D. N. Y.

Deputy

By [Signature]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 41

UNITED STATES OF AMERICA

-vs-

THOMAS CONTINO

FILED
CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.

APR 14 1976

PETITION FOR A WRIT OF
HABEAS CORPUS AD PROSEQUENDUM

No. 73 CR 659

TIME AM.....
PM.....

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK:

The petition of Marsha Katz Special Attorney for the Eastern
District of New York, respectfully shows to this Court that Thomas Contino
now being detained in Rikers Island, Rikers Island, N.Y. C-76
is charged, by an indictment filed against him in the Eastern District of New York,
with violation of Title 18 United States Code, Section(8) 495

It is necessary that the said defendant Thomas Contino be brought
to the United States District Court for the Eastern District of New York for trial
before said United States District Court for the Eastern District of New York on
the charges now pending against him.

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus ad Prosequendum
issue in this behalf directing that the said Thomas Contino be produced
at the time and place set forth in said Writ, in civilian clothes, and that, after
the said Thomas Contino shall have appeared in pursuance of said
Writ, and at the termination of the proceedings in the said United States District
Court for the Eastern District of New York on that particular day, he be returned
immediately to the custody of the Warden, Rikers Island, Rikers Island, N.Y. C-76
under safe and secure conduct.

Dated: Brooklyn, NY
April 14, 1976

Marsha Katz
SPECIAL ATTORNEY

EASTERN DISTRICT OF NEW YORK, SS:

Marsha Katz, being duly sworn, says that he is the petitioner above
named; that he had read the foregoing petition by him subscribed and knows the
contents thereof; that the same are true of his own knowledge and belief.

Marsha Katz
SPECIAL ATTORNEY

Sworn to before me this 14th
day of April 1976

Robert J. L...

CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.
APR 14 1976

9.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

42

UNITED STATES OF AMERICA

U.S. DISTRICT COURT E.D. N.Y.

PETITION FOR A WRIT OF
HABEAS CORPUS AD PROSEQUENDUM

-vs-

MAR 25 1976

No. 75 CR 659

PAUL LABRIOLA

TIME A.M.
P.M.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK:

The petition of MARSHA KATZ Special Attorney for the Eastern
District of New York, respectfully shows to this Court that PAUL LABRIOLA
now being detained in Rikers Island, Rikers Island, New York
is charged, by an indictment filed against him in the Eastern District of New York,
with violation of Title 18 United States Code, Section(x) 495

It is necessary that the said defendant PAUL LABRIOLA be brought
to the United States District Court for the Eastern District of New York for trial
before said United States District Court for the Eastern District of New York on
the charges now pending against him.

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus ad Prosequendum
issue in this behalf directing that the said PAUL LABRIOLA be produced
at the time and place set forth in said Writ, in civilian clothes, and that, after
the said PAUL LABRIOLA shall have appeared in pursuance of said
Writ, and at the termination of the proceedings in the said United States District
Court for the Eastern District of New York on that particular day, he be returned
immediately to the custody of the Warden, Rikers Island, Rikers Island, N.Y.
under safe and secure conduct.

Dated: Brooklyn, NY
MARCH 25, 1976

Marsha Katz
SPECIAL ATTORNEY

EASTERN DISTRICT OF NEW YORK, SS:

MARSHA KATZ being duly sworn, says that he is the petitioner above
named; that he had read the foregoing petition by him subscribed and knows the
contents thereof; that the same are true of his own knowledge and belief.

Marsha Katz
SPECIAL ATTORNEY

Sworn to before me this 26th
day of March, 1976

TR. R. S. R. O.
NOTARY PUBLIC
STATE OF N.Y. 30-3610090
QUALIFIED NASSAU
TERM EXPIRES 3-30-77

10

7-CP 6.7 2- AT 43

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO THE WARDEN, Rikers Island, Rikers Island, New York

AND/OR TO THE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF NEW YORK, AND/OR TO ANY OF HIS DEPUTIES, AND/OR TO ANY UNITED STATES MARSHAL

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

GREETINGS:

MAR 31 1976

YOU ARE HEREBY COMMANDED to have the body of PAUL LABRIOLA now detained under your custody, as it is said, under safe and secure guardant, P.M. in civilian clothes, before the United States District Court for the Eastern District of New York, at the United States Courthouse, in such courtroom as shall be designated, in the Borough of Brooklyn, City, State and Eastern District of New York, on the 30th day of March, 1976 at 10 o'clock in the fore noon of that day, for trial before said United States District Court for the Eastern District of New York upon an indictment filed in said Eastern District of New York against the said PAUL LABRIOLA charging him with violation of Title 18 United States Code, Section(x) 495 and, at the termination of the proceedings in the said United States District Court on that particular day, that you return him forthwith to the Warden, Rikers Island, Rikers Island, New York under safe and secure conduct.

LET THE ABOVE WRIT ISSUE.

Dated: Brooklyn, NY
MCH 25, 1976

UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

LEWIS GRZEL

Clerk USDC EDRY

By: *[Signature]*
Deputy Clerk

(11)

Criminal Action No. 75 CR 659

UNITED STATES DISTRICT COURT
Eastern District of New York

UNITED STATES OF AMERICA

—Against—

PAUL LADRIOLA

WRIT FOR HABEAS CORPUS
AD PROSEQUENDUM

DAVID G. TRAGER

United States Attorney,
Attorney for U.S.A.E.D.N.Y.
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within
in hereby admitted.

Dated: , 19

Attorney for

Marsha Katz, 212-596-3761

PLEASE TAKE NOTICE that the within
be presented for settlement and signa-
to the Clerk of the United States Dis-
Court in his office at the U. S. Court-
e, 225 Cadman Plaza East, Brooklyn,
York, on the day of
at 10:30 o'clock in the forenoon.

d: Brooklyn, New York,

, 19

United States Attorney,
Attorney for

Attorney for

PLEASE TAKE NOTICE that the within
true copy of duly entered
in on the day of
in the office of the Clerk of
U. S. District Court for the Eastern Dis-
of New York,
d: Brooklyn, New York,

, 19

United States Attorney,
Attorney for

Attorney for

Executed this writ as commanded herein

Charles C. Dwyer

United States Marshal, E. D. N. Y.

Deputy

U. S. Courthouse
Brooklyn, N. Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 45

UNITED STATES OF AMERICA

-vs-

PAUL LABRIOLA

FILED
U.S. DISTRICT COURT, E.D. NY

APR 26 1976

TIME AM.....
PM.....

PETITION FOR A WRIT OF
HABEAS CORPUS AD PROSEQUENDUM

No. 75 CR 659 S

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK:

The petition of MARSHA KATZ Special Attorney for the Eastern
District of New York, respectfully shows to this Court that PAUL LABRIOLA
now being detained in SING SING PRISON Ossining, New York
is charged, by an indictment filed against him in the Eastern District of New York,
with violation of Title 18 United States Code, Section(s) 495

It is necessary that the said defendant PAUL LABRIOLA be brought
to the United States District Court for the Eastern District of New York for trial
before said United States District Court for the Eastern District of New York on
the charges now pending against him.

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus ad Prosequendum
issue in this behalf directing that the said PAUL LABRIOLA be produced
at the time and place set forth in said Writ, in civilian clothes, and that, after
the said PAUL LABRIOLA shall have appeared in pursuance of said
Writ, and at the termination of the proceedings in the said United States District
Court for the Eastern District of New York on that particular day, he be returned
immediately to the custody of the Warden, SING SING PRISON, OSSINING, NEW YORK
under safe and secure conduct.

Dated: Brooklyn, NY
April 23, 1976

Marsha Katz
SPECIAL ATTORNEY

EASTERN DISTRICT OF NEW YORK, SS:

MARSHA KATZ being duly sworn, says that he is the petitioner above
named; that he had read the foregoing petition by him subscribed and knows the
contents thereof; that the same are true of his own knowledge and belief.

Marsha Katz
SPECIAL ATTORNEY

Sworn to before me this 23rd
day of April, 1976

Donald J. Mc Caffrey
Notary Public State of New York
415 461 0855 Subscribed in Green County
My Comm. Expires April 30, 1977

14

A 46 75-CP 6595

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO THE WARDEN, SING SING PRISON, OSSINING, NEW YORK

AND/OR TO THE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF NEW YORK, AND/OR TO ANY OF HIS DEPUTIES, AND/OR TO ANY UNITED STATES MARSHAL

GREETINGS:

YOU ARE HEREBY COMMANDED to have the body of PAUL LABRIOLA now detained under your custody, as it is said, under safe and secure conduct, in civilian clothes, before the United States District Court for the Eastern District of New York, at the United States Courthouse, in such courtroom as shall be designated, in the Borough of Brooklyn, City, State and Eastern District of New York, on the 26th day of April, 1976 at 10 o'clock in the fore noon of that day, for trial before said United States District Court for the Eastern District of New York upon an indictment filed in said Eastern District of New York against the said PAUL LABRIOLA charging him with violation of Title 18 United States Code, Section(a) 495 and, at the termination of the proceedings in the said United States District Court on that particular day, that you return him forthwith to the Warden, SING SING PRISON, OSSINING, NEW YORK under safe and secure conduct.

LET THE ABOVE WRIT ISSUE.

Dated: Brooklyn, NY
April 23, 1976

Mark A. T. [Signature]
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

LEWIS ORGEL
Clerk USDC EERY
By: *[Signature]*
Deputy Clerk

X 15

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the _____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York, _____, 19____

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered in on the _____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,
Dated: Brooklyn, New York, _____, 19____

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

Criminal Action No. 75 CR 659 S

UNITED STATES DISTRICT COURT
Eastern District of New York

United States of America

—Against—

PAUL LABRIOLA

WRIT OF HABEAS CORPUS AD
PROSEQUENDUM

DAVID G. TRAGER

United States Attorney,
Attorney for U.S.A.E.D.N.Y.
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within
is hereby admitted.

Dated: _____, 19____

Attorney for _____

Marsha Katz 212-596-3177

Executed this writ as commanded herein

Frank C. Devoy

United States Marshal E. D. N. Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff, :

-against- :

75-CR-659S

PAUL LABRIOLA,
THOMAS CONTINO,
MARGARET SIERRA,
JAMES CONTINO and
WALTER REMENICK,

Defendants. :

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding. United States Courthouse
Brooklyn, New York

Gene Rudolph March 30, 1976
10:30 o'clock a.m.

Official Court Reporter
U. S. District Court

Before :

HONORABLE MARK A. COSTANTINO,

U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

1
2 A p p e a r a n c e s :
3

4 MARSHA KATZ
5 Special Attorney
6 Department of Justice

7 PHILIP PELTZ, ESQ.
8 Attorney for Defendant Labriola
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1 THE CLERK: Criminal cause for pleading, Labriola,
2 et al.

3 MR. JAMES CONTINO: Your Honor, I have an affidavit
4 from my lawyer.

5 THE COURT: How old is he?

6 MRS. SIERRA: Nine months.

7 MS. KATZ: Your Honor, Mr. Labriola and Mr. Thomas
8 Contino were brought over. I had called down to the pen
9 and they were to bring them up. I don't know where they
10 are.

11 I also don't know where their attorneys are.

12 THE COURT: You have to call again.

13 MS. KATZ: All right. Mr. Kelly is ill and I am
14 uncertain whether he was able to contact Mr. Ramenick or
15 not and I would ask that that be put on for a later date.

16 THE COURT: All right.

17 I have an affidavit from Mr. Lopez. It says he
18 is engaged in a case in Supreme Court before Judge
19 Canuto.

20 Then we have Judge - - rather, we have Phil Brown,
21 who is before - - evidently a civil case before Judge
22 Becanella.

23 MS. KATZ: Your Honor, I don't see any objection
24 to them - - for the purposes of today in terms of the
25 pleading not to have counsel, but I would ask - -

1 THE COURT: Is that you?

2 MRS. SIERRA: Yes.

3 MS. KATZ: - - that we do this all at once and wait
4 until Mr. Labriola and Mr. Contino come up.

5 THE COURT: All at once?

6 MS. KATZ: Yes. I'd prefer doing it as a group
7 and I will try to contact the marshals and find out why
8 he's not been brought up.

9 THE COURT: All right. Second call.

10 (Recess taken.)

11 THE CLERK: Second call, Labriola, et al.

12 MS. KATZ: Your Honor, Mrs. Labriola is in the
13 courtroom and I believe she'd want to speak to her
14 husband.

15 THE COURT: He is not here. They haven't brought
16 him over.

17 MS. KATZ: When he's brought over. She has come
18 over on several occasions because it has been adjourned.

19 If they could bring him either up to my office
20 and she could speak to him there?

21 THE COURT: They will not bring him over today, is
22 that right?

23 THE MARSHAL: They're going to bring them.

24 MR. JAMES CONTINO: Can I speak to my brother, too,
25 your Honor?

MS. KATZ: I understand they are in transit here. It's not that they are not bringing them over. They're in the process of being transported here and they haven't arrived yet.

THE COURT: When they come over a - -

MS. KATZ: Could we have them brought or could they come down to the marshals and speak to them? I don't know what the facilities are in the marshal's offica.

THE COURT: I haven't the slightest idea what anything is outside of the courtroom.

THE MARSHAL: In your office or in the anteroom over there.

MS. KATZ: All right. I believe that you are on trial so that - -

THE COURT: Yes.

MS. KATZ: It can be done in my office.

THE COURT: Will we be able to take his plea today?

MS. KATZ: I would like to. I was under the impression that both of their attorneys had been contacted and were told.

THE COURT: We will enter a general not guilty plea.

MS. KATZ: Your Honor, Mr. James Contino's case,

1 Mr. James Contino was named in the conspiracy. He's
2 not named in the superseding indictment.

3 Therefore, the government would dismiss the
4 charges against Mr. James Contino. That's Indictment
5 75-CR-659. So it is unnecessary for him to enter any
6 plea.

7 THE COURT: All right. Are you Mr. Contino?

8 MR. JAMES CONTINO: Yes.

9 THE COURT: All right. Then you heard what the
10 United States Attorney just said. The indictment, the
11 underlying indictment is being dismissed against you and
12 you are no longer before the Court. You will now be
13 exonerated. Bail to be exonerated, I am talking about.
14 Bail is exonerated and you may leave the court.

15 However, I assume that you wish to talk to him?
16 Anything to do with him at all?

17 MS. KATZ: No, your Honor.

18 THE COURT: You are dismissed.

19 MS. KATZ: We've taken care of the matter.

20 MR. JAMES CONTINO: May I please see my brother,
21 your Honor, when he comes? I haven't seen him in nine
22 weeks.

23 THE COURT: You may speak to your brother when he
24 comes.

25 MR. JAMES CONTINO: There is no indictment for me?

1 MS. KATZ: You're not being indicted.

2 THE COURT: All right. Dismissed.

3 On the new indictment, you are not named in the
4 new indictment.

5 MR. JAMES CONTINO: Thank you very much.

6 THE COURT: All right. Good day.

7 Now, Ms. - - who does he represent?

8 MS. KATZ: Mr. Labriola.

9 THE COURT: He is not here yet?

10 Labriola is not here.

11 MR. PELTZ: Yes.

12 MS. KATZ: Miss Sierra is named in the superseding
13 indictment and a number of counts. The - - also the
14 indictment, the conspiracy indictment against her will
15 not be dismissed by the government. Her attorney made
16 no motion to double-jeopardy. There are no legal
17 problems with her being named in the conspiracy and it
18 is the government's intention to try her on both the
19 conspiracy charges and on the superseding indictment
20 and whatever order your Honor - -

21 MISS SIERRA: Excuse me. But there was a motion
22 for double-jeopardy.

23 MS. KATZ: Your Honor, the government has no
24 intention of dismissing the charges.

25 THE COURT: Well, at this time you are reserving

1 the right of your lawyer. The Court will enter a plea
2 of not guilty in your behalf and reserve any and all
3 rights that you may have in reference to such indictment
4 and any motions your lawyer wishes to make are reserved.
5 You are waiving no rights at this time, double-jeopardy
6 or otherwise.

7 All right. Now we will give your lawyer how much
8 time?

9 MS. KATZ: Your Honor, the government is prepared
10 to try either the conspiracy or the superseding indict-
11 ment immediately.

12 THE COURT: All right. What we will do than, we
13 will put it on for - - all motions, you must give them
14 time to make motions at this point.

15 MS. KATZ: Yes.

16 THE COURT: All motions must be completed by
17 April the 23rd and the trial date is set for April the
18 26th.

19 MS. KATZ: All right. Your Honor, there is one
20 other thing. The government has no objection to the
21 bail continuing on Miss Sierra, with the following
22 condition: That she submit to having herself refinger-
23 printed and photographed.

24 This is a new indictment, and according to the
25 procedure, she has to go through that process again.

1 THE COURT: All right. You understand that?

2 MISS SIERRA: Yes, your Honor. April 26th?

3 THE COURT: Trial date.

4 MISS SIERRA: Trial date.

5 THE COURT: Your lawyer had been advised he has to
6 make all motions before April 23rd and have the Court
7 hear them.

8 All right. Bail is continued but you must be re-
9 fingerprinted.

10 MISS SIERRA: Right.

11 MS. KATZ: She will have to go down to the
12 marshal's office for that purpose.

13 THE COURT: All right.

14 MS. KATZ: Your Honor, as long as Mr. Peltz is
15 here, we might put on the record the fact that Mr.
16 Labriola is being brought over. I understand from the
17 marshals that he is in transit and for whatever reason
18 he has just not arrived yet.

19 MR. PELTZ: Okay.

20 THE COURT: All right.

21 (Recess taken.)

22 THE CLERK: Third call, Labriola.

23 THE COURT: Will you stand in for Contino as well?

24 MR. PELTZ: Yes, your Honor.

25 THE COURT: His attorney is not here.

1 MS. KATZ: Your Honor, yesterday the grand jury
2 in this district returned an indictment against Mr.
3 Labriola, Thomas Contino, Margaret Sierra and Walter
4 Remenick.

5 I'd like the record to show that I am giving a
6 copy of this indictment to each of the defendants.

7 THE COURT: All right.

8 MS. KATZ: In an earlier proceeding today, the
9 government stated that it was dismissing the underlying
10 indictment 75-CR-659 as to Mr. James Contino.

11 The government also stated that as to Miss Sierra
12 the government intended to try her on both the supersed-
13 ing indictment and the underlying conspiracy indictment.

14 At this time the government would move to dismiss
15 the conspiracy indictment 75-CR-659 as to Mr. Paul
16 Labriola and as to Mr. Thomas Contino.

17 THE COURT: As to both? Dismissed?

18 MS. KATZ: Yes.

19 MR. PELTZ: May it please the Court, I have had
20 pending before your Honor for some time a motion to
21 dismiss that indictment, for specified grounds, basically
22 on the theory that there was a double-jeopardy situation
23 involved. I know your Honor is fully familiar with that.

24 I am wondering if in the government's motion at
25 this time it is now joining in counsel's motion or

1 moving on its own accord?

2 MS. KATZ: Your Honor, I'd like to make the record
3 clear. The government is not joining. We do not feel
4 that the indictment should be dismissed on double-
5 jeopardy grounds.

6 We are making it on our own motion and not joining
7 on the defendant's motion.

8 THE COURT: All right. They have a right to make
9 it on their own motion.

10 MR. PELTZ: But that is an undecided motion before
11 the Court and I would now seek to move forward on that
12 motion, unless your Honor is ruling that my motion is
13 mooted.

14 THE COURT: That is exactly what I was going to
15 say. The Court accepts the government's motion to
16 dismiss the underlying indictment and declares the motion
17 for double-jeopardy is moot at this time.

18 That does not waive any of the rights you may
19 have to allege it at a future date, but at this time it
20 is moot and dismissed.

21 MS. KATZ: Your Honor, the government is prepared
22 to try this case immediately. The witnesses are avail-
23 able to the government and we could go forward as soon
24 as possible.

25 THE COURT: That will be the same date and all

1 motions addressed to this indictment must be completed
2 by April 23rd and the trial date is April 26, 1976.

3 MR. PELTZ: On behalf of Thomas Contino, if your
4 Honor will let me appear today on behalf of his attorney
5 Steven J. Eyman, who is otherwise engaged. It is his
6 request that the bail which was set and posted on the
7 preceding indictment be carried over to this indictment.

8 MS. KATZ: Your Honor, the government has no
9 objection, except for one condition, that Mr. Contino
10 resubmit to having himself fingerprinted and photographed
11 under this indictment.

12 THE COURT: Yes.

13 MR. PELTZ: Yes.

14 MS. KATZ: The government has no objection to
15 having the same bail.

16 THE COURT: And Mr. Labriola?

17 MR. PELTZ: Your Honor, in behalf of Mr. Labriola,
18 same request.

19 MS. KATZ: The government with the same condition
20 does not oppose the request.

21 THE COURT: All right.

22 MR. PELTZ: There was something that I had dis-
23 cussed with Ms. Katz off the record, was that for
24 reasons that she and I discussed, that possibly for the
25 next week Mr. Labriola be kept in federal custody

1 inasmuch as there was a good deal of difficulty getting
2 him here this morning.

3 MS. KATZ: I have no objection. I will also keep
4 Mr. Thomas Contino in the federal custody for the next
5 week since his attorney is not present today.

6 MR. THOMAS CONTINO: I'd rather not go. I'd
7 rather go back to Rikers.

8 MS. KATZ: We will send him back. I thought it
9 was a convenience to him. We will ask that the writ be
10 satisfied today.

11 THE COURT: The writ will be satisfied.

12 MR. THOMAS CONTINO: I'd rather go back.

13 THE COURT: Do you want to continue in federal
14 custody?

15 MR. PAUL LABRIOLA: Yes, your Honor.

16 THE COURT: All right. Continue Mr. Labriola in
17 federal custody.

18 MS. KATZ: Thank you, your Honor.

19 * * *

1
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

4 -----X
5 UNITED STATES OF AMERICA, ★

6 -against-

7 PAUL LABRIOLA, FRANK MEMOLO,
8 MARGARET SIERRA, MARY MAGLIONE,
9 RICHARD SULLIVAN, THOMAS CONTINO,
JAMES REMNICK,

Defendants.

No. 75 CR 659

10 -----X
11
12 United States Courthouse
Brooklyn, New York

13 May 12, 1976
14 10:00 O'clock a.m.

15 B e f o r e :

16 HONORABLE MARK A. COSTANTINO, U.S.D.J.

17
18 I hereby certify that the foregoing is
19 a true and accurate transcript from my
stenographic notes in this proceeding.

20 *Ray Stalker*
21 *Ry, E.C.*
22 Official Court Reporter
U. S. District Court

23
24 RAYMOND P. STALKER
Acting Official Court Reporter

APPEARANCES:

DAVID G. TRAGER, ESQ.,
United States Attorney for the
Eastern District of New York

BY: MARSHA KATZ, ESQ.,
Assistant U.S. Attorney

PHILIP BELTZ, ESQ.,
Attorney for Defendant Labriola

STEVEN HYMAN, ESQ.,
Attorney for Defendant Memolo

DAVID RUDOLPH, ESQ.,
Attorney for Defendant Sierra

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THE CLERK: United States of America vs.
Contino.

MS. KATZ: Mr. Contino is being brought up.

THE COURT: There is no requirement that the
defendant be in the courtroom while the lawyer is
arguing the motion.

MR. HYMAN: Good morning, your Honor.

THE COURT: Good morning. This is a criminal
motion?

MR. HYMAN: Yes.

THE COURT: This is the one on the interstate
agreement?

MR. HYMAN: That's correct, your Honor.

THE COURT: Do you have anything further
to say?

MS. KATZ: Your Honor, we have submitted
several briefs on it. It is the Government's position
that both Mr. Contino and Mr. Labriola were not
brought here pursuant to the Interstate Detainer
Agreement Act, but were brought here under the power
of I believe it's 28 USC §2241(c5). A writ of
habeas corpus prosequendam and is under the
inherent power of the Federal District Court. That
there is nothing in the Act that was meant to eliminate

1 this right. The act was simply a means of creat-
2 ability, a means of creating new rights.

3 When Congress adopted this Act in 1970 they
4 did so only as a way providing the State a means for
5 getting Federal prisoners. Not as a way for Federal
6 Government to get State prisoners. I would also raise
7 the issues of the facts that this is really nothing
8 that was interstate. These individuals were housed
9 in New York and being brought to another jail.

10 THE COURT: I understand your argument to go
11 to the Federal Government receiving a State prisoner
12 and it signifies in the statute that United States
13 shall be considered one state for that purpose only.
14 You're saying it is a sending state.

15 MS. KATZ: Prior to Congress consenting to the
16 Act in 1970 a state had no means of enforcing their
17 request for a Federal prisoner.

18 THE COURT: Right.

19 MS. KATZ: They could do so and many cases it
20 was honored by the Federal Government. But they had
21 no means of enforcing that request. It was simply
22 a decisionary type situation and that was the purpose
23 of Congress in signing the Act.

24 THE COURT: Which would make it a sending
25 state.

1 MS. KATZ: That's correct. I would point out
2 that the proposed amendment that is now before
3 Congress does state in the initial preamble that
4 the United States acts as a sending state only. I
5 believe that the judicial means or the judicial
6 conference in support of this Act, which has been
7 adopted by the Judicial Committee of Congress does
8 explain that this is their intention in 1970 and this
9 is merely a clarification of what their intent had
10 been.

11 THE COURT: What do you have to say as to
12 that?

13 MR. HYMAN: The Act unfortunately for Ms. Katz
14 is very clear. It indicates that the United States
15 has joined the Act on Interstate Agreement and hereby
16 entered into on and in behalf of the District of
17 Columbia and joining in substantially --

18 THE COURT: They still make a distinction
19 between receiving and sending states.

20 MR. HYMAN: Except --

21 THE COURT: It's the United States, although
22 considered a state for the purposes of that, it is a
23 sending state. Then you wouldn't be entitled to a
24 dismissal of the indictment.

25 MR. HYMAN: Your Honor, I believe Judge Bartels

1 has read it differently as your Honor may be aware.

2 THE COURT: That's what makes the judiciary
3 independent. Thank God. Otherwise we'd be in trouble.

4 MR. HYMAN: My only point is that in reviewing
5 this and in the case law --

6 THE COURT: Because I respect Judge Bartels,
7 there's no question about it. He and I have been on
8 the bench together for many, many years.

9 MR. HYMAN: I understand and it is in no way
10 binding upon you. I only point out that I know of no
11 authority that would indicate that the United States
12 should not be bound as any other state and that once
13 Mr. Contino went from one jurisdiction and was returned
14 to the jurisdiction under the terms of the --

15 THE COURT: Given the literal reading of the
16 Act itself without try ing to assume anything or
17 fit anything into the situation that is before the
18 Court, possibly you would be right. I've read it
19 literally and I've read it literally with regard to
20 whether or not it was a receiving or sending state.
21 I find that the United States is a sending state.
22 Then of course dismissal is not proper. That's my
23 opinion at this time.

24 MS. KATZ: Your Honor, I would also suggest,
25 even reading it literally it no where says to limit

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the preexisting rights that exist.

THE COURT: That's true.

MS. KATZ: And that they were brought out here pursuant to those preexisting rights and there is nothing in the Act that says this is meant to take over from those rights.

MR. HYMAN: Judge, may I just point out one other thing?

THE COURT: Sure.

MR. HYMAN: That is both pragmatic as well as legal. If your Honor denies this motion we could go through a six or seven week trial when in fact the issue is going to be appealed as a result of Judge Bartels decision. If the Second Circuit should affirm Judge Bartels our trial would have been for naught.

If on the other hand it is reversed, your Honor would also be reversed and at that time should your Honor dismiss it, then we could have a trial. It seems to me, your Honor, in view of the fairness of the statute it is going to take the Second Circuit a while to try to interpret the language of what Congress meant to get around in clear wording. If the Second Circuit wants to do such a thing, I'm sure it will decide to do it.

THE COURT: Yes?

1 MR. HYMAN: Should we in the meantime have
2 subjected to a six, seven, eight, maybe nine week
3 trial at the rate we're going, it could be longer.

4 THE COURT: I'm not even going to say.
5 Judge Bartels is in the same situation I have here.
6 I know what this case is all about. I have no idea
7 who the parties are. I have no idea what they are
8 charged with. I know where they came from. I have
9 no idea whether they are in Federal custody or not.
10 I know nothing about it and for me to presume that
11 Judge Bartels decision is wrong or right, it would
12 be completely erroneous on my part.

13 MS. KATZ: Your Honor, since I was the
14 attorney in the other two cases before Judge Bartels
15 I feel that I sort of have an obligation to put the
16 facts forward.

17 THE COURT: Put them forward.

18 MS. KATZ: On their case, Mr. Contino's
19 situation is somewhat the same. In the two cases
20 before Judge Bartels they were both in New York
21 State prisons. They were brought down pursuant to
22 a writ or prosequendam signed by a Federal District
23 Court Judge for the purposes of arraignment. At that
24 time there was some preliminary hearings for arraign-
25 ment and trial dates were set. There was some discussion

1 as to whether they should stay or whether they should
2 be sent back. The transcript of the record reflects
3 that the Government stated that they would take no
4 position. That they were willing to keep them in
5 the MCC or if the Judge was willing to send them back
6 and bring them down for the trial, it was okay.
7 Judge Bartels at that time made the decision that they
8 should be sent back and brought down for the purposes
9 of the trial.

10 They were in Federal custody for 11 days, at
11 which point they were returned to their state prisons.
12 They were then brought down for the trial and at that
13 time they made the various motions of which Judge
14 Bartels has ruled on.

15 As to Mr. Contino, Mr. Contino was brought down
16 on March 30th also for the purpose of arraignment and
17 was returned to Riker's Island the same day. The
18 writ had been satisfied without the knowledge of the
19 Government.

20 I would suggest that Mr. Labriola who has
21 made a similar motion is very different. In that
22 case he was in custody of the New York State. New
23 York State specifically requested that he be returned
24 for a judicial proceeding before Judge Roberts. At
25 that proceeding Mr. Labriola made a motion that he

1 had been incorrectly sent. Judge Roberts granted
2 that motion and reduced his sentence from zero to
3 seven years. I suggested that Mr. Labriola's motion
4 is somewhat unique if the Government refuses to send
5 him back to the State and we would be faced with the
6 position at a later date that Mr. Labriola could come
7 in and say if I had known any sentence was going to be
8 reduced I would have made different decisions,
9 possibly to go to trial or not to go to trial, to
10 plead or not to plead; you denied me those rights.

11 So I would suggest that Mr. Labriola's
12 situation is very different from the situation before
13 Judge Bartels. As to Mr. Contino, Mr. Contino's
14 situation would fall within whether they were kept
15 for 11 days and he was kept for less than a day.
16 Nonetheless --

17 THE COURT: It would fall within Judge Bartels
18 decision.

19 MS. KATZ: Nonetheless Mr. Labriola was returned
20 and not brought in on the date that trial was set.

21 THE COURT: Is there any distinction?

22 MS. KATZ: Between Mr. Contino --

23 THE COURT: Between the arraignment and setting
24 it down for trial, being tried?

25 MS. KATZ: That's exactly the situation that

1 was before Judge Bartels. They'd been brought down
2 for the purposes of arraignment and being returned
3 and then brought back for the purpose of trial.

4 Mr. Contino's situation could be similar to the
5 two cases before Judge Bartels. It is the Govern-
6 ment's position that Mr. Labriola's case is not.

7 It is a unique case in that the State was request-
8 ing it. The proceeding was clearly for his benefit
9 and the denial of the Government might have allowed
10 them to be open to criticism and if I had known what
11 I had been faced with with the State I would have
12 acted differently.

13 I suggest that case is different, but Mr. Contino's
14 is not.

15 MR. BELTZ: Your Honor, inasmuch as the
16 Government on the Contino motion saw to offer the
17 Court a distinguishing point as to my client
18 Mr. Labriola, I would like you to hear me?

19 THE COURT: Yes.

20 MR. BELTZ: First, I submit that there is no
21 evidence before your Honor to show that there is a
22 difference. I submit that if there were it would
23 show you that there is a difference without any
24 distinction.

25 I submit that prima facie Mr. Labriola's

1 motion papers and the law make out a case for a
2 dismissal.

3 THE COURT: What she's saying is as far as
4 Labriola is concerned it's a sending situation. He
5 was in Federal custody.

6 MS. KATZ: I'm not saying that. If that's the
7 impression I gave I did not mean to. I apologize to
8 the Court.

9 He was in State custody at the time we initially
10 got him and we returned them to State custody at
11 their request and brought him back here for the trial.
12 I apologize to the Court.

13 MR. BELTZ: And your Honor, I respectfully
14 submit that Ms. Katz in endeavoring to bring before
15 the Court as she does the circumstances of the return,
16 which the Government seeks to initiate or excuse
17 their glaring violation of the defendant's rights
18 under the Act is something that should be done
19 evidentiarily. If the Government wants to come forward
20 and use an alleged request from the New York District
21 Attorney's office, I think they should do it with a
22 hearing.

23 I can show, as I submit my memorandum shows,
24 there were several ways that it could have been done
25 without violating the Act.

1 THE COURT: Under ordinary circumstances, since
2 a jury has not been sworn, the problem could be
3 resolved quite easily. But, these are not ordinary
4 circumstances. We are faced with the Speedy Trial
5 Rules.

6 If you are willing, and I think this may be
7 the answer to it, if you are willing to waive your
8 Speedy Trial Rules on behalf of your clients and on
9 behalf of your client, do so and put this case over
10 without my signing this motion. Put this case over
11 until such time the Court of Appeals does decide the
12 motion.

13 The same memorandum is before Judge Bartels
14 for dismissing the indictment. That way I would
15 know exactly whether or not you should continue or
16 whether it should be dismissed.

17 MS. KATZ: I will also state for the record --

18 THE COURT: Do you have any objection?

19 MS. KATZ: I have no objection to that.

20 THE COURT: I think that is a real good reason
21 and answer to the problem that faces the Court at this
22 point.

23 MS. KATZ: I want to state for the record the
24 Government has made a petition for reconsideration on
25 the motion before Judge Bartels and he is considering

1 that. I do not know his decision on that.

2 But, the Government's position is that if
3 Judge Bartels maintains his first version and dismisses
4 the indictment, it is the position of the Government
5 we are going to immediately appeal. I just wanted
6 to put that on the record.

7 THE COURT: I think it's probably a better way
8 to handle it, to see what they do. I would even
9 consider disbanding this jury because I wouldn't want
10 them to hang around and put it over for another two
11 weeks.

12 MS. KATZ: I would ask your Honor before we
13 disband the jury that the defendant's be brought out
14 and consent on the record?

15 MR. HYMAN: Let us talk to the defendants.

16 THE COURT: We can always set it down for
17 another day. I see no purpose in continuing while
18 the issue is before another court or the Court of
19 Appeals, which is directly related to the issues I
20 have before me.

21 MR. HYMAN: Except, your Honor, there is one
22 problem.

23 THE COURT: What is your problem?

24 MR. HYMAN: Before I go talk to Mr. Contino
25 we've already made pretrial motions that your Honor

1 has denied.

2 THE COURT: I know you have. If you don't want
3 to waive it, I'll tell you now I'm going to continue
4 with the jury.

5 MR. HYMAN: Would your Honor consider throwing
6 this out --

7 THE COURT: This motion can be continued during
8 the trial, it is not waived.

9 MR. HYMAN: I'm asking you one thing, Judge.
10 Would your Honor -- well, if we go talk to our
11 clients, I don't know what they'll say. Would your
12 Honor agree that if we discuss this with them and if
13 there is some agreement we would not be prejudiced
14 as to the time that we have the motion?

15 THE COURT: You would not be prejudiced as
16 far as the motion. This would be tacked on that
17 period and it would not be part of that time.

18 MR. HYMAN: We'll talk to our clients.

19 THE COURT: To waive at this time the Speedy
20 Trial Rule.

21 MR. HYMAN: From this point on.

22 THE COURT: From this point on and there will
23 be a waiver of Speedy Trial Rule and anything prior
24 to that, you still have that issue inasfar as you
25 should go on appeal at any time.

1 MR. HYMAN: Let us check with our clients.

2 THE COURT: We'll adjourn this until they come
3 back with their clients.

4 (Short recess.)

5 (Whereupon, the Court resumed.)

6 (Defendant and counsel present.)

7 MR. HYMAN: Your Honor, I have had an opportunity
8 to discuss this matter with Mr. Contino. I believe I
9 can state Mr. Contino's position as follows:

10 We have been ready for trial and remained ready
11 for trial. We have made motions that your Honor is
12 considering with regard to the Speedy Trial Rule,
13 which your Honor has already denied and we have
14 subsequently made a motion for a dismissal under the
15 Interstate Compact Act. It appears that from the
16 discussion previously there is a case before Judge
17 Bartels that has already been decided and the Govern-
18 ment intends to pursue it in the Second Circuit.

19 It seems to me and to my client that in the
20 interest of judicial economy and in the interest
21 generally of everyone concerned that it would be fool-
22 hardy for us to go through a six to nine week trial
23 only to have the matter possibly reversed as a result
24 of the violation of the Interstate Compact. Therefore,
25 without waiving any other rights other than the ones

1 to start the trial today, my client is agreeable to
 2 putting off the trial date until such time the Second
 3 Circuit has reached a decision that would focus more
 4 light on this case. We of course reserve all the
 5 rights other than that we do in the interest of
 6 judicial economy and administration of justice, agree
 7 to an adjournment until the Second Circuit reaches
 8 that decision.

9 THE COURT: Mr. Contino, you would only be
 10 waiving a Speedy Trial right as of today forward. Any
 11 motions the lawyers have made prior to that time which
 12 I've denied and the motion that is reserved in this
 13 case, you do not have to go up on appeal, that could
 14 be proffered before the Court and you're not waiving
 15 that right.

16 DEFENDANT CONTINO: I understand that.

17 THE COURT: Mr. Labriola?

18 MR. BELTZ: Mr. Labriola can be presumed to
 19 have made the same statement.

20 THE COURT: You adopt the statement made by
 21 Mr. Hyman?

22 MR. BELTZ: Yes. Mr. Labriola wanted to
 23 address the Court with your Honor's permission to ask
 24 you one question?

25 THE COURT: You do?

1 DEFENDANT LABRIOLA: I want to know what I'm
2 waiving. Am I waiving outside --

3 THE COURT: Only the time from today to the
4 day it starts. You'll not invoke your Speedy Trial
5 Right for this period. Any Speedy Trial Right you had
6 prior to this period, even though I've denied it is
7 reserved.

8 MS. KATZ: I would state for the record the
9 Government is prepared to try this case and I would
10 like to state on the record we are prepared to try
11 the case against Mr. Contino and Mr. Labriola. We
12 are also prepared to try the case against Mr. Memolo,
13 he's not involved in the Interstate motion and I ask
14 that he also be addressed as to whether he consents
15 to the waiver of his rights.

16 MR. RUDOLPH: Your Honor, I have not discussed
17 that matter with my client before I give your Honor
18 an answer to that I would have to discuss it with
19 co-counsel and my client.

20 MR. KATZ: May I ask what you would like to
21 do about the Suppression Hearing that was to be held
22 today?

23 THE COURT: You think we should hold it today?

24 MS. KATZ: Your Honor, the witnesses are here.
25 The Government is prepared to hold the Suppression

1 Hearing.

2 THE COURT: Why not?

3 MS. KATZ: We can hold it, if your Honor wishes.

4 THE COURT: It might become academic.

5 MS. KATZ: Does your Honor wish to reserve until
6 after the Court of Appeals?

7 THE COURT: There is no time limit on it.

8 MR. BELTZ: Judge, we had a motion on the indict-
9 ment that was dismissed and perhaps incorrectly and I
10 assume that motion is still pending and we have a motion
11 for the return of the \$2,000 which I know Ms. Katz is
12 either prepared or unprepared --

13 MS. KATZ: I have spoken to Mr. Beltz about it
14 and I spoke to Mr. Sonenshine or someone from his firm
15 concerning the initial motions. We are willing to have
16 an evidentiary hearing on the motion.

17 The Government was never in possession of the
18 \$2,000. Never saw any \$2,000 and Mr. Labriola's car
19 was moved because it was obstructing traffic at the
20 time of his arrest and it was simply moved from the
21 point of obstruction to the closest available legal
22 spot. At the time he was brought here his possessions
23 were returned to him and the keys to his car were
24 returned to him.

25 Now, your Honor, we are prepared to have an

1 evidentiary hearing and we're certainly willing to go
2 forward on that. If not today at the earliest
3 convenience of the Court.

4 THE COURT: I have no knowledge of it. I have
5 no knowledge of it. Is he claiming he's missing
6 \$2,000?

7 MR. BELTZ: Yes, your Honor, and that his car
8 was in Government custody or missing for 11 days.

9 MR. LABRIOLA: That's correct.

10 MR. BELTZ: When he did get it back it was
11 minus \$2,000 and certain legal papers.

12 MS. KATZ: Your Honor, as I stated before the
13 car was simply moved from obstructing traffic.

14 THE COURT: Can you hold that hearing today?

15 MS. KATZ: I'm not prepared to hold a hearing
16 now but --

17 THE COURT: When can you hold a hearing?

18 MS. KATZ: We could have it tomorrow or Monday.
19 I don't know what agents were involved.

20 THE COURT: We can hold it on Monday.

21 MS. KATZ: Your Honor, I will arrange for the
22 various witnesses to come here on Monday.

23 THE COURT: You understand they don't have it.
24 No one has it. But he says he lost \$2,000, I guess
25 it's my obligation to hold a hearing.

Al 81

1 MR. BELTZ: Thank you.

2 THE COURT: Monday morning at 10:00 o'clock.
3 I think we can start right on time. I'll reserve
4 decision on this case.

5 MR. RUDOLPH: Can I confer with co-counsel?

6 THE COURT: Mr. Beltz, I think you should
7 serve some type of complaint in order to get her before
8 the Court. I don't think it has anything to do with
9 the criminal case.

10 MR. BELTZ: Only that -- your Honor might
11 recognize now that we have moved under Rule 41. I
12 think for the Suppression hearing and/or for a return
13 in this case. I move for the return of that. Now,
14 if my memories are inappropriate that is something
15 else. But I think the Court has the power to order
16 the return of the property.

17 MS. KATZ: Your Honor, it cannot be used at
18 the trial since the Government's position is we've never
19 seen such property or intend to use such property at
20 trial. So, it is not a correct suppression motion.

21 THE COURT: Well, there's no rush on it.
22 I think I'll put it over for a while. I don't think
23 I have the authority under the circumstances without
24 some type of a complaint being filed and the Government
25 has to have an opportunity to answer it.

1 MR. RUDOLPH: There is no difference to me
2 as long as it's over before we start the case and
3 the Court can make a decision. This has to be done--
4 I don't see why it should have to be done any differently.

5 MR. BELTZ: If you did want to continue this
6 possibly for Monday morning?

7 THE COURT: I'll continue it Monday morning.
8 But I don't know whether I'll actually have a hearing
9 subject to what we find. Let's see, you have a 41
10 motion for return of property. That's what I think
11 he was discussing.

12 MS. KATZ: Your Honor, I would ask and I'm sorry
13 that I just simply don't remember whether Mr. Beltz
14 has filed formal motion papers or not, whether or not
15 it's an oral motion, but if it is merely an oral motion
16 I ask that formal papers be served.

17 MR. BELTZ: My recollection is that I filed
18 papers -- between now and Monday, I'll be glad to find
19 them.

20 THE COURT: I think your clients filed formal
21 papers saying there was money missing.

22 MR. BELTZ: I think it's appropriate under
23 Rule 41 (e) of the Federal Rules of Criminal Procedure.

24 MS. KATZ: I ask that Mr. Beltz give me some
25 supporting law for his position. Mr. Beltz is saying

1 that he is moving under a rule that requires the
2 return of property that was improperly seized. This
3 is the type of situation where the Government is holding
4 property and refuses to return it to the individual.
5 It is the Government's position that we are not holding
6 any property because we've never gotten the property.

7 It would seem to me correct remedy is under
8 the Civil Rights or some type of civil remedy demanding
9 that property from the United States Government.
10 Then of course an evidentiary hearing to determine
11 whether we did take the property or the property was
12 allegedly stolen from Mr. Labriola.

13 THE COURT: I think she's right. They say they
14 don't have it. This 41 motion that you're talking
15 about is property taken illegally and impounded and
16 they have an inventory. Now, you say you want the
17 car back. Sure, it's been impounded. But here they
18 never received it. They've never seen it. They do
19 not have it. What is a hearing going to do?

20 MS. KATZ: I would ask that Mr. Beltz --

21 THE COURT: I don't see what good a hearing
22 will do.

23 MS. KATZ: And what is proper is that they
24 should file some type of memorandum of law indicating
25 the --

1 THE COURT: An you can bring an emphatic denial
2 to it. I think you're right. This section does not
3 cover that proposition. This is an inventory section
4 as I read it.

5 MR. BELTZ: If your Honor will permit me to
6 review my papers, the Court may be absolutely right.

7 THE COURT: What do you have to say?

8 MR. RUDOLPH: Your Honor, I was ready to make
9 a statement, but I believe co-counsel would like to
10 have the benefit of conversing with me prior to
11 making the statement because it may be problems with
12 a waiver on the behalf of Mr. Memolo.

13 MR. HYMAN: Your Honor is going to make a
14 decision that he is apparently not going to like. I
15 would just like to know if there's any way we could
16 resolve this thing.

17 MS. KATZ: The Government would ask that we
18 try him if he will not waive.

19 THE COURT: We'll sit with this jury.

20 MS. KATZ: Your Honor, we would ask he be tried
21 first on the conspiracy. He has waived his right on
22 the Speedy Trial Rules as to the conspiracy and the
23 Government has stated our position that we intend to
24 try him. If we are going to do that, certainly I was
25 prepared to open this morning and I am prepared to

1 begin a trial. That trial of Mr. Contino and
2 Mr. Labriola and Mr. Memolo. I would certainly like
3 a certain amount of time to rearrange the witnesses
4 that must be called as to Mr. Memolo.

5 THE COURT: Do you want the same jury or shall
6 we select a new one?

7 MS. KATZ: Your Honor, I have no objection
8 to this jury being continued.

9 THE COURT: 2:00 o'clock --

10 MS. KATZ: Being in this position with Mr. Remnick,
11 I would ask that he state so on the record that he's
12 willing to go with this jury.

13 MR. RUDOLPH: Well, as I understand it, Judge,
14 is that Mr. Remnick waived his Speedy Trial Rights.

15 THE COURT: He waived them?

16 MR. RUDOLPH: A while back, I'm not sure which
17 indictment he waived them under. I was not the
18 attorney of record, Mr. Kelly was. I don't believe
19 that there has been any problem up to this point in
20 time with Mr. Remnick's Speedy Trial Rights as a
21 result of that waiver. No motions have been made on
22 behalf of Mr. Remnick for a speedy trial or for
23 dismissal as a result of a denial of speedy trial
24 because of that waiver.

25 Your Honor indicated earlier that you felt this

1 trial we would have a decision from the Second Circuit
2 within the next week or two.

3 THE COURT: Probably.

4 MS. KATZ: Your Honor, I don't know when we
5 will have a decision from the Second Circuit. But I
6 do know it would be a normal appeal.

7 MR. RUDOLPH: Which would be a substantial
8 length of time and an adjournment.

9 THE COURT: I think the Government should
10 review it as soon as possible.

R2 11 MS. KATZ: I don't know if it will be a normal
12 appeal or expedited appeal. I believe our office
13 has requested there be an expedited appeal.

14 THE COURT: The Court of appeals will take
15 recognition of the fact it will probably effect many
16 cases and a decision should be forthcoming.

17 MR. BELTZ: I tried to find a case under the
18 same situation that has arisen with a Judge of the
19 Southern District having dismissed an indictment and
20 the same problem is now cropping up elsewhere in the
21 Circuit.

22 MR. RUDOLPH: My point is merely this, Judge
23 Mr. Remnick is not involved in the compact decision
24 at all and I see no reason why he at this point in time,
25 for the record, should waive his speedy trial rights.

1 THE COURT: We'll give him a trial.

2 MR. RUDOLPH: However, I was under the
3 impression we were going to trial on the substantive
4 act.

5 THE OCURT: We'll go with the same jury.

6 MR. RUDOLPH: What your Honor is saying, I
7 believe is what Ms. Katz is saying, she'll not sever
8 the cases and we wish to go ahead and try him on the
9 indictment, namely the conspiracy indictment. I believe
10 that since I came here today to try the substantive
11 case not a conspiracy case, we've had no preparation
12 with my client to try the conspiracy count at all. I
13 think it would prejudicial to him at this point in
14 time.

15 THE COURT: Then he either waives his right
16 or we go to trial.

17 MS. KATZ: Mr. Remnick has been well aware
18 that we were going to try him on the conspiracy case.
19 We've stated consistently the indictment was not
20 dismissed as to Mr. Remnick. It is our intention to
21 try him both on the original conspiracy indictment and
22 on the substantive superseding indictment. It is
23 still our position we should strongly object to the
24 severance of the case in the substantive counts as
25 to the fact there are -- it is a multi-count indictment

1 and there are many defendants and there are many
2 witnesses.

3 THE COURT: You want to try the one count?

4 MS. KATZ: We were trying him as to the
5 conspiracy.

6 THE COURT: That will be all right.

7 MR. RUDOLPH: Let me talk to my client, Judge.

8 THE COURT: It's all right with me.

9 MR. RUDOLPH: Your Honor, Mr. Remnick, given the
10 choice of either waiving his speedy trial rights or
11 being forced to go to trial today --

12 THE COURT: Not forced, rightfully so. It is
13 a privilege the Court extended to him and a privilege
14 of getting his trial on the calendar.

15 MR. RUDOLPH: I understand that. Mr. Remnick's
16 view and my view as well when given the choice between
17 either waiving his speedy trial rights on the
18 substantive counts were going to trial today on the
19 conspiracy indictment --

20 THE COURT: I will not accept that statement as
21 a statement that you are now going to say if you
22 have a choice you'll waive the speedy trial rule,
23 because next week I know exactly what is going to
24 happen. He will argue his speedy trial rights were
25 violated because your Honor has placed him in that

1 position. I will not accept that statement unless
2 it's absolutely candid and a truthful statement that
3 he's going to waive it, otherwise I won't accept it.
4 I'm not up here to play games. You must make an
5 affirmative statement.

6 MR. RUDOLPH: Your Honor, I'm trying to relate
7 the contents of the conference --

8 THE COURT: I don't care about the conference.
9 If he doesn't want to waive it under those circumstances,
10 under no circumstances will the Court take what I
11 would call a conditional waiver. I have no right to
12 do so, nor will I accept it.

13 MR. RUDOLPH: Your Honor, I'm trying to give
14 an explanation --

15 THE COURT: We are ready for trial on the
16 conspiracy count. That is the Court's position.

17 MR. RUDOLPH: Your Honor, all I'm trying to
18 do is make the record clear.

19 THE COURT: Fine, the record is clear. I
20 understood you were ready for trial on the conspiracy
21 count and you won't waive everything and I'll not
22 permit you to waive it if you --

23 MS. KATZ: Your Honor, may I suggest that since
24 Mr. Remnick has not addressed this Court nor expressed
25 his feelings that the Court voir dire him?

1 He certainly has been present. He's well aware
2 of the fact there is currently a jury. That the
3 Court has extended to him the opportunity to be tried
4 on the conspiracy count now and you can ask him how
5 he feels about it as opposed to just simply leaving
6 it at the word of his attorney. He is present and
7 I'm sure he can express how he feels and the Court
8 can make its decision.

9 MR. RUDOLPH: Your Honor, Mr. Remnick said to
10 me that whatever I thought was best that he would go
11 along with it. I explained to him what his choices
12 were and what the various alternatives would be.

13 I don't believe Mr. Remnick is sufficiently
14 knowledgeable of the law.

15 THE COURT: You better not say that.

16 MR. RUDOLPH: Your Honor --

17 THE COURT: I've been up around this back wall
18 for a long time. They are knowledgeable about the law.
19 They learn it as they go along. I think they know
20 more than the lawyers.

21 MR. RUDOLPH: Your Honor, I explained to him
22 the choices that were put to me at the bench.

23 THE COURT: It wasn't a choice. It is what
24 I call a statement made for the record and for the
25 attorney to advise his client that he can go to trial

1 today or he can waive his speedy trial rights.

2 It is not a question of a choice. If I were to give
3 you a choice I wouldn't be doing my duty properly
4 because I would be placing your defendant into what
5 you would call the proverbial box. I will not place
6 him in that box.

7 All right, so the way you propound it to the
8 Court is what will make the Court make its determina-
9 tion properly.

10 MR. RUDOLPH: Your Honor, Mr. Remnick at this
11 point in time wishes to waive his speedy trial rights
12 unconditionally with respect to the current indict-
13 ment, the superseding indictment, for such time as
14 the Court of Appeals rules on the motions currently
15 before Judge Bartels and only for such time that he
16 does that with no conditions at this time, your Honor.

17 MS. KATZ: I would ask that he state he does
18 that with the understanding that your Honor is offer-
19 ing him an opportunity to go to trial today.

20 THE COURT: Mr. Remnick, you heard what your
21 lawyer said?

22 MR. REMNICK: Yes.

23 THE COURT: Step forward. Now, your lawyer
24 having made that statement, you're willing to
25 unconditionally waive your speedy trial rights from

1 this day on, to the date that the case will be set
2 down for trial, would that be an accurate statement
3 by him?

4 MR. REMNICK: Right.

5 THE COURT: Would that be an accurate statement
6 by him?

7 MR. REMNICK: Yes, your Honor.

8 THE COURT: All right. Also, do you understand
9 likewise that this Court in no way intimidates you
10 into making such a waiver?

11 MR. REMNICK: Yes, sir.

12 THE COURT: You understand that?

13 MR. REMNICK: Yes.

14 THE COURT: Is there any reservation whatsoever
15 in your mind that you are being intimidated whatsoever
16 not to stand trial?

17 MR. REMNICK: No.

18 THE COURT: Now, you also understand the only
19 reason for this request of a waiver is because of the
20 legal question that is going to go before the Court
21 of Appeals, that is before another Judge?

22 MR. REMNICK: Yes.

23 THE COURT: And your co-defendants, your co-
24 defendants Mr. Labriola and Mr. Contino have agreed
25 to the waiver for the purposes of getting an opinion

1 from the Court of Appeals, awaiting an opinion from
2 the Court of Appeals?

3 MR. REMNICK: Yes, your Honor.

4 THE COURT: All right. Now, is there any
5 objection by the Government?

6 MS. KATZ: No objection, your Honor.

7 THE COURT: And no objection by the attorney
8 for the defendant?

9 MR. RUDOLPH: No.

10 THE COURT: Any objection by the defendant?

11 MR. REMNICK: No.

12 THE COURT: The Court will accept his waiver
13 at this time. Now, the next proposition is we should
14 set a date down for trial.

15 MS. KATZ: Your Honor, as I said before I am
16 uncertain as to whether this will be an ordinary
17 appeal or an expedited appeal. I'm not familiar with
18 the Appellate Division as to how long they take --

19 THE COURT: Can you put it on for a status
20 report on June 4th?

21 MR. HYMAN: What date?

22 THE COURT: June 4th. Status report; if we
23 have the opinion by that time then we will start the
24 trial on June 7th.

25 MR. BELTZ: Your Honor, would you just please

1 keep Mr. Labriola on for Monday morning and let me see
2 if I do have a basis on the motion since I did file a
3 motion?

4 MS. KATZ: Can I ask that Mr. Contino and
5 Mr. Labriola be kept in the Metropolitan Correctional
6 Center pending the results of the various motions?

7 THE COURT: They will be kept there pending
8 the results of the motions.

9 MS. KATZ: Your Honor, the previous hearing
10 or date set for trial we turned over for your voir
11 dire certain original documents. If your Honor would
12 not mind I would like the original documents and
13 substitute Xerox copies?

14 THE COURT: I haven't had a chance to look at
15 them at this time.

16 MS. KATZ: But the originals?

17 THE COURT: I will have time this afternoon.

18 MS. KATZ: I have Xerox copies of them for the
19 Court.

20 THE COURT: The Court is recessed at this time.

21 (Whereupon, the Court recessed.)

22 * * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
-against- :
PAUL LABRIOLA, :
Defendant. :

75-CR-659(s)

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAR 31 1977 ★

TIME A.M.
P.M.

United States Courthouse
Brooklyn, New York

November 12, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

EMANUEL KARR
OFFICIAL COURT REPORTER
I hereby certify that the foregoing is a
true and accurate transcript from my sten-
ographic notes in this proceeding.

Official Court Reporter
U. S. District Court

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: MARTHA KATZ, ESQ.
Assistant U.S. Attorney

PHILIP PELTZ, ESQ.
Attorney for Defendant

EDWARD KELLY, ESQ.
Attorney for Remnik

1 THE CLERK: United States of America v. Paul
2 Labriola.

3 THE COURT: This is for status.

4 MR. PELTZ: That is right. That was the case --

5 THE COURT: I know the case.

6 MR. PELTZ: I was going to highlight the issue,
7 the Circuit Court ruled on October 22nd.

8 THE COURT: What has happened now? Is it in the
9 Supreme Court?

10 MS. KATZ: What has happened at this point is
11 that the Government has by motion asked for an
12 extension of time in order to file a motion for an
13 en banc hearing.

14 We have requested from the Solicitor General
15 permission to make such a motion and we are awaiting
16 word from Washington as to whether he can go ahead.

17 Now as to how we would like to proceed in this
18 case, it is the position of the Government from the
19 facts known that this fact situation is close to Fusco.
20 It is the position of the Government, and Mr. Labriola
21 is not in that case, Mr. Labriola was in state custody
22 and was brought here pursuant to a writ. However, he
23 was returned at the request of the state in order to
24 have a hearing before the sentencing judge in which
25 his sentence was reduced, and I believe he was released

1 on bail. I am not exactly sure of the outcome of that
2 hearing.

3 The Government feels that is very different than
4 a situation where they were just sent back and would
5 take this position.

6 However, for the record, the Government is
7 prepared and ready to try this case.

8 Now if your Honor wishes to rule on the
9 defendant's motion at this time, then fine.

10 MR. PELTZ: I think that the Magistrate's
11 opinion, and of course we are in no way bound by the
12 opinion of the Superior Court of Pennsylvania, but it
13 certainly gives a little guidance, on one or the other
14 of the learned opinions interpreting the interstate act,
15 and both opinions say that these attempts at finding
16 exceptions are just attempts and have no basis in law
17 or in the spirit of the legislative intent which
18 resulted in the act.

19 Now Mr. Labriola has been writing me constantly
20 urging that --

21 THE COURT: He has two correspondents, you and
22 I --

23 MS. KATZ: Three.

24 THE COURT: Three correspondents, you, I and
25 she.

1 MR. PELTZ: Understandably, your Honor, he
2 would like to see this moved.

3 THE COURT: This has been up in the Circuit now
4 how long?

5 MR. PELTZ: I don't know, sir. I mean this is
6 not my only case that I have.

7 THE COURT: There is another case?

8 MS. KATZ: His other case, as far as I know its
9 status, is still pending before the Supreme Court.
10 I am not aware of any decision and I am sure
11 Mr. Labriola --

12 THE COURT: That was not my question.

13 That related to the question of the wiretap;
14 this is on the detainer case.

15 MR. PELTZ: It was Labriola's feeling, though,
16 that your Honor might well have permitted him to
17 remain at liberty because he has an application for
18 certiorari pending, and were it not for this case it
19 would appear that your Honor would have every
20 justification in law, based on the decision of the
21 circuit court, at this time to dismiss this indictment.

22 THE COURT: Which indictment? This one?

23 MR. PELTZ: This one on which the interstate
24 motion is pending before you and which your Honor is
25 awaiting word.

1 THE COURT: I am awaiting the Circuit Court, I
2 am awaiting the Circuit Court.

3 MR. PELTZ: That opinion came down on October 22.

4 THE COURT: Yes, and now we are waiting for the
5 en banc.

6 MS. KATZ: We are going to request an en banc
7 panel.

8 THE COURT: When will you have notice of the
9 en banc?

10 MS. KATZ: I don't know. It is not being
11 handled by myself. It is being handled by the United
12 States Attorney, but I will contact them and find out
13 the time.

14 I know they as of last week requested a thirty-
15 day extension in which to file a motion for an en banc
16 hearing, so it would seem at least that nothing will
17 occur within the next thirty days, at the very
18 minimum, and I don't know the time schedule for these
19 things, although I will try to find out.

20 THE COURT: Well, I don't know, I have been
21 thinking. I don't know if your statement that I would
22 have released him except for this case is correct,
23 that is not so.

24 MR. PELTZ: That is his belief. I didn't say
25 that.

1 THE COURT: He has a lot of beliefs. We know
2 his beliefs and if we were to listen to him then I
3 wouldn't have to do much more. In any event, that is
4 not so. He is being incarcerated because of the fact
5 that the Court of Appeals has affirmed the decision as
6 to the wiretaps that this Court found, as to those
7 it excluded and those included, and they also affirmed
8 the method used in determining his guilt at the time.
9 That is the reason for it.

10 The second reason for it is that this Court had
11 found in a plenary hearing that there were no promises
12 to release him on the basis of an appeal either to the
13 Court of Appeals or to the United States Supreme Court.
14 Now I understand they did that in the state court,
15 Judge Roberts, he had promised that he would stay
16 either his incarceration and that he would release him
17 on bail, which he did.

18 MR. PELTZ: I think Judge Roberts subsequently
19 vacated that conviction.

20 THE COURT: What he did he said he based on the
21 promises made inter alia between yourself and the
22 United States Attorney's Office, and I had a plenary
23 hearing and after listening to the testimony determined
24 that there was no promise in fact made to release him,
25 that the promise, if anything, ran only from the time of

1 the determination by this Court up to the time of the
2 Appellate Court's ruling, at which time he was then
3 incarcerated pending his appeal. That is still the
4 Court's opinion.

5 All right, just so that we have it straight.

6 You can get a copy of the minutes and you may
7 send them on to him.

8 I can't ever forget this case. I think it
9 stays in the back of my head. I know everything about
10 it.

11 MR. PELTZ: So it is your Honor's inclination
12 to await the action of the Second Circuit Court of
13 Appeals?

14 THE COURT: Yes.

15 I am declining it at this time. I will wait
16 for the en banc. If it is granted, that is one thing;
17 if it isn't granted, then the Court will have to do
18 what is necessary.

19 All right.

20 What is your position, Mr. Kelly?

21 MR. KELLY: Your Honor, our office represents
22 Mr. Remnik.

23 I suppose it is a question of whether or not
24 we want a severance and to go forward with Mr. Remnik's
25 case or not. I am really not in a position to

1 indicate that to the Court.

2 THE COURT: Do you want to wait thirty days
3 likewise?

4 MR. KELLY: Well, Judge, Mr. Rudolph of our
5 office is exactly handling this case. He is out ill
6 today.

7 I would suggest that perhaps we could put the
8 Remnik case on next week for Mr. Rudolph to present
9 to the Court, what his views are.

10 THE COURT: Next Friday?

11 Is that all right with you?

12 MS. KATZ: Yes.

13 THE COURT: Next Friday.

14 MR. KELLY: Thank you, your Honor.

15 MR. PELTZ: What, your Honor, would be an
16 appropriate time as to Labriola?

17 MS. KATZ: I believe that we have thirty days
18 in which to file the motion for an en banc.

19 MR. PELTZ: Thirty days from October 22nd?

20 MS. KATZ: It would be, I believe, thirty days
21 from a date last week, of which I don't know, I would
22 assume Friday, to make it practical.

23 THE COURT: We cannot move it further than
24 December 10th. We will put it on for December 10th for
25 a status report.

1 MR. PELTZ: Thank you, your Honor, December 10th.

2 MS. KATZ: And the Remnik case is adjourned
3 until Friday?

4 THE COURT: Yes.

5 MR. KELLY: Thank you, Judge.

6 THE COURT: That will be next Friday, the 19th.

7 All right.

8 (Whereupon, the matter was adjourned.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

75-CR-659s

PAUL LABRIOLA, :

Defendant.:

United States Courthouse
Brooklyn, New York

December 10, 1976
10:00 o'clock a.m.

B e f o r e :

HONORABLE MARK A. COSTANTINO,

U.S.D.J.

I hereby certify that the foregoing is
a true and accurate transcript from my
stenographic notes in this proceeding.

Gene Rudolph

Official Court Reporter
U. S. District Court

GENE RUDOLPH
OFFICIAL COURT REPORTER

A p p e a r a n c e s :

DAVID G. TRAGER
United States Attorney
Eastern District of New York

BY: MARSHA KATZ
Assistant United States Attorney

PHILIP PELTZ, ESQ.
Attorney for Defendant

BY: CAROL MELLO, ESQ.

* * *

1 THE CLERK: Criminal cause for report, U.S.A.
2 versus Paul Labriola.

3 THE COURT: What is happening?

4 MS. KATZ: Your Honor, yesterday - -

5 MS. MELLO: Philip Peltz, 32 Court Street, by
6 Carol Mello.

7 MS. KATZ: Your Honor, yesterday the government
8 filed a petition for a hearing en banc before the
9 Second Circuit on the Interstate Detainer Act. We are
10 now waiting to hear the decision by the circuit as to
11 whether they will hear it en banc or whether they will
12 not hear it. =

13 That is the status of that appeal and I believe
14 this case is pending determination of that appeal.

15 THE COURT: Yes. We had better put it over.

16 MS. MELLO: May I just ask the government if they
17 still intend, assuming that this decision remains the
18 way it reads now, if they intend to argue that Labriola
19 case is different from and should not be decided in the
20 same way as that case pending in the Second Circuit?

21 MS. KATZ: Yes, your Honor. I believe that the
22 factual situation in the case or involving Mr. Labriola
23 is very different than the factual situation involving
24 Mr. Morrel and Mr. Fusco and would argue that before
25 your Honor, and if need be, before the Second Circuit.

1 THE COURT: We will wait until the decision and
2 we will put this over until January the 23th for report.

3 MS. MELLO: Thank you, your Honor.

4 THE COURT: All right.

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6 * * *

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14 I hereby certify that the foregoing is
15 a true and accurate transcript from my
stenographic notes in this proceeding.

16 *Hena Rudolph*

17 Official Court Reporter
18 U. S. District Court
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FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D.N.Y.

★ AUG 09 1977 ★

TIME A.M. _____
P.M. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

-against- :

PAUL LABRIOLA, :

Defendant. :

-----x

75-CR-659 (S)

United States Courthouse
Brooklyn, New York

May 4, 1977
10:00 o'clock A.M.

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

I hereby certify that the foregoing is
a true and accurate transcript from the
stenographic notes in this case.

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

1
2 Appearances:

3
4 DAVID G. TRAGER, ESQ.
5 United States Attorney
6 for the Eastern District of New York

7 BY: BERNARD FRIED, ESQ.
8 -and-
9 ALLAN SLEPPIN, ESQ.
10 Assistant U.S. Attorneys

11
12 PHILIP PELTZ, ESQ.
13 Attorney for Defendant Labriola

14
15 STEVEN HYMAN, ESQ.
16 Attorney for Contino

17
18 Also present:

19
20 DEFENDANT LABRIOLA
21
22
23
24
25

1 THE CLERK: United States of America against
2 Paul Labriola.

3 THE COURT: Is he here?

4 MR. SLEPPIN: Your Honor, I have prepared a
5 writ, and I have asked Harold to call down the pen and
6 see if they had him down there. Harold advised me
7 that Mr. Peltz was on his way; is that correct, Harold?

8 THE CLERK: Yes.

9 THE COURT: Make it second call then.

10 MR. SLEPPIN: If he is on his way --

11 MR. FRIED: Is Mr. Labriola in?

12 I didn't check.

13 THE COURT: Check with him.

14 MR. HYMAN: Just for the record, my name is
15 Steven Hyman, on behalf of Mr. Contino.

16 Your Honor, I have not submitted any written
17 papers on this. I'm just late because the Government
18 had my wrong address.

19 MR. FRIED: That's correct.

20 MR. HYMAN: I have received papers. I would,
21 if it would be sufficient for Mr. Fried's point, join
22 in the motion papers, of Mr. Peltz, which I believe
23 essentially set forth the issues, so we will not
24 delay this matter any further, and I would ask your
25 Honor for the opportunity to submit additional papers.

1 Mr. Fried and I both have been discussing trying
2 to find the transcript and the date, your Honor, that
3 we agreed to have this matter adjourned until the
4 Mauro decision was made. I think that would have
5 relevance on the motion that we made, if the Government
6 is correct, for retroactivity, we would move for
7 dismissal for speedy trial with the Government.

8 THE COURT: On whom?

9 Contino?

10 MR. HYMAN: Yes.

11 THE COURT: That would not apply for Labriola.
12 We had a trial. How many trials are we going to have?

13 MR. HYMAN: We picked the jury in this case, your
14 Honor. Then, as I recall, made the motion to dismiss
15 based on Mauro.

16 MR. FRIED: Your Honor, this is not the Labriola
17 indictment that he's currently serving sentence on.
18 This is the other Labriola indictment involving counter-
19 feit money. Just for the record, I don't concede that
20 an agreement of this nature was made. Mr. Hyman has
21 advised me this morning that he recalled one, and I
22 have no objection to whatever time he needs to find
23 it. I think that we ought to perhaps, if we can't
24 find it, move to settle the record and decide just
25 what, in fact, was decided on.

1 MR. HYMAN: We can do that.

2 THE COURT: Here is Mr. Peltz now. Are we going to
3 argue the motion now?

4 (Whereupon, the defendant, Paul Labriola, was
5 brought into the courtroom.)

6 THE COURT: All right, ready to argue?

7 Well, the first part of the motion you are not
8 going to argue, as that is still before the Court of
9 Appeals, right?

10 MR. FRIED: Your Honor, what's before the Court of
11 Appeals, of course, is that precise question raised
12 in the case of --

13 THE COURT: Cicho and Colello.

14 MR. FRIED: It was not raised in the briefs.
15 It was made in the oral argument on March 31st, and
16 there has been no -- I might note for the record the
17 petitioner general is filing a petition for certiorari
18 in the case of United States against Mauro.

19 THE COURT: I think that's the way it should go.

20 MR. FRIED: Well, it might be interesting for the
21 Court to know that the Fifth Circuit has not followed
22 the Second Circuit in this regard, and a few weeks
23 ago, actually a few months ago, the Third Circuit with-
24 drew its opinion in the Sorro case. That's been
25 set down for reargument on May 12th in the Third

1 Circuit. In addition, there's a Ninth Circuit District
2 Court that has not followed it, and that's on appeal.
3 So, it looks likely, because of the conflict in the
4 Circuit, that the Supreme Court is going to take the
5 case. That's the hope --

6 MR. PELTZ: I would respectfully suggest that at
7 this moment though, that we would be bound by the
8 rule of law in the Second Circuit, and the Government
9 usually argues, when we come up with distinguishing
10 cases in the Third, Fifth, Eighth or any other Circuit,
11 they remind us that we are in the Second Circuit.

12 THE COURT: That doesn't have anything to do with
13 the Second Circuit. It's also one of the judges of
14 the other courts, I won't mention the judge's name,
15 but he did put that in an opinion. We are bound by
16 some of that business, too.

17 MR. FRIED: I'm not suggesting Mauro was not, in
18 indicating what we think may happen.

19 THE COURT: I think that it's a necessary avenue
20 under the circumstances. I personally think so.

21 Now, what's the next argument?

22 MR. PELTZ: Your Honor, I think that the issues
23 have been adequately ventilated by the papers, and I
24 would be quite content to have your Honor decide the
25 issues on the file papers, and memos before this Court.

1 THE COURT: All right. Anyone have an objection
2 to that?

3 MR. FRIED: Perhaps -- I have no objection. But,
4 it might also be worthy of note that the question of
5 retroactivity is also before the United States against
6 Ferro in which petition for reargument or reargument
7 of mark was filed by the Government. I think it was
8 March 17th of this year.

9 THE COURT: Did they argue it?

10 MR. FRIED: It hasn't been argued. We have not
11 yet heard from the Second Circuit. But, the precise
12 question of retroactivity, which has not been in the
13 papers, is now on the petition for reargument.

14 MR. PELTZ: I submit, your Honor, that my memo-
15 randum squarely and adequately deals with why that
16 argument is totally inopposite in the case before your
17 Honor.

18 THE COURT: All right. What I think that we must
19 do is review the papers completely, which I have done,
20 but then make a determination from that and determine
21 whether or not I should hold in abeyance --

22 MR. PELTZ: I am sorry?

23 THE COURT: Whether I should hold in abeyance any
24 determination subject to what's been the Court of Appeals
25 future holdings or whether I should make a determination

1 at this time.

2 MR. PELTZ: Your Honor, we would most respectfully
3 urge on the papers before your Honor, and on the
4 laws as exists in this Court, particularly inasmuch as
5 Mr. Labriola has been seeking a determination in this
6 issue now for one solid year. I'm told, as a matter
7 of fact, this motion was made May 4th -- April 29th,
8 and then May 4th.

9 Your Honor, on behalf of Mr. Labriola I would
10 urge that this not be held in abeyance, but that it
11 be decided.

12 THE COURT: All right. I have to make a written
13 opinion in any event.

14 MR. FRIED: Your Honor, I would like to note in
15 response to that, while the Government has no position--
16 of course it can't -- that there was originally, as
17 I understand it, an agreement or rather an acceptance
18 of the Court's suggestion that the original motion
19 be postponed pending a decision in the Mauro case.
20 So that it's somewhat disingenuous to argue that. Mr.
21 Labriola may have been waiting over a year --

22 DEFENDANT LABRIOLA: Excuse me, your Honor.

23 I respectfully say that I withdraw that waiver,
24 because I was under the -- I was misunderstood in that.
25 I waived until June 7th, and the minutes will bear me

1 out. When it went beyond that in October, prior to
2 the Mauro decision, I filed under the speedy trial act,
3 and I filed to dismiss for failure to prosecute. That
4 clearly shows I withdraw that waiver. There's also a
5 5(a) situation here under Ford.

6 THE COURT: 5(a)situation?

7 THE DEFENDANT LABRIOLA: That's right.

8 Under the Interstate Agreement Act, there's a
9 5(a) Violation.

10 THE COURT: Didn't you withdraw that one?

11 DEFENDANT LABRIOLA: No, I did not, your Honor.
12 I most certainly did not. And, prior to the Mauro
13 decision, which came out October 26th, I filed duly
14 with the Court on October 22nd, four days previous
15 to the decision of the Circuit, demanding a trial with-
16 in one hundred and eighty days, and one hundred eighty
17 days have elapsed, your Honor, so there's a 5(a)
18 situation under Mauro--under Ford.

19 MR. FRIED: Well, of course, your Honor, the
20 rule, Article 4C provides that that provision can be
21 waived in open Court for good cause, and our intention
22 would be that the waiver existed at the time of the
23 agreement to hold further decisions in this case
24 pending decision of Mauro.

25 THE COURT: All right, in any event, I must take

1 that under advisement likewise. That was 5C?

2 THE DEFENDANT LABRIOLA: 5(a), your Honor.

3 MR. FRIED: 5(a) is the sanction portion.

4 Article 4C provides for the -- there's a time period.

5 MR. PELTZ: Your Honor, I submit that if as Mr.
6 Labriola has stated on therecord he made such a motion
7 prose, on notice to the Government--

8 THE COURT: Is that in writing? You say that
9 motion was in writing?

10 THE DEFENDANT LABRIOLA: Your Honor, I have it here.

11 THE COURT: We will have it, too. If you sent it
12 to us, we have it. Just hold up the first page and
13 see if that's what I am looking at.

14 (Whereupon, the document was handed up to the
15 Court.)

16 THE COURT: I will take a look at that one. It
17 mustbe in the file. I don't have it out here this
18 morning.

19 Do you have a copy of that?

20 MR. FRIED: Your Honor, I don't recall ever seeing
21 this. I'll have to check the docket.

22 MR. PELTZ: Your Honor, this would not necessarily
23 have gone to Mr. Fried. It would have gone to Miss
24 Katz or one of her colleagues.

25 THE COURT: Well, do you know anything about it?

1 MR. SLEPPIN: What was the date on that?

2 DEFENDANT LABRIOLA: October 22nd.

3 MR. SLEEPIN: Your Honor, myself and Mr. Greenidge
4 just got into this case in March, so we would have no
5 reason to know about this. I haven't seen it. I'm
6 not saying that it didn't happen.

7 THE COURT: I'll take a look at the file and find
8 out what's there. You sent a copy of it to the Strike
9 Force?

10 DEFENDANT LABRIOLA: Of course, your Honor. I sent
11 three copies to the Clerk of the Court also, and I have
12 a receipt, certified mail.

13 MR. FRIED: Your Honor, we would, of course, with
14 respect to this motion, make the same argument that
15 it's being --

16 THE COURT: You better reply to it.

17 MR. FRIED: I'll have to first see if I was served.

18 DEFENDANT LABRIOLA: Your Honor, I filed for
19 default by this. I was denied that.

20 MR. FRIED: Let me note, your Honor, for the record --

21 THE COURT: Let him look at it, because I have nothing
22 before me this morning.

23 MR. FRIED: We will reply to this, but let me note
24 for the record, that the issue dealing with Rule 4C,
25 the one hundred eighty day provision is currently under

1 a hearing.

2 THE COURT: Where?

3 MR. FRIED: Before the Court of Appeals in the
4 Ford case.

5 THE COURT: Before the Second Circuit.

6 Ok, anything else.

7 MR. HYMAN: Your Honor, may I just say that on
8 behalf of Mr. Contino, as I have indicated before,
9 we join in the motion. I will send a letter at least
10 so that there will be a formal record of that.

11 In addition, your Honor, I have been trying, it
12 may be helpful that we try and follow exactly what
13 transcripts were made at what time in regard to what
14 days in this case. I am trying to find out the date
15 that we all agreed.

16 THE COURT: Get the docket sheet and look at it.

17 MR. HYMAN: We've been trying to do that, your
18 Honor.

19 THE COURT: You may not have all of the transcripts,
20 but I'm sure it's indicated, because each time that
21 we have had a stenographer.

22 MR. HYMAN: Based on that, I would ask an opportu-
23 nity to submit further memoranda to your Honor. Would
24 your Honor give me two weeks?

25 THE COURT: Yes.

1 MR. HYMAN: Thank you.

2 MR. FRIED: So I understand the schedule, Mr.
3 Hyman is going to submit additional memoranda in two
4 weeks, and we will check and see.

5 THE COURT: Check on the dismissal motion, and I
6 will make a decision on the motion before the Court on
7 retroactivity, whether it should be delayed before the
8 final determination of the Court of Appeals, and also
9 a motion for dismissal for failure of a speedy trial.

10 MR. FRIED: Pursuant to the Interstate Agreement.

11 THE COURT: Yes, Interstate Agreement.

12 MR. FRIED: And the Government will have an
13 opportunity to respond to those papers.

14 DEFENDANT LABRIOLA: Your Honor, at this time I
15 move to have my bail exonerated in this case. This
16 money's been up for over a year. It's not my money.
17 I have to pay it back.

18 First of all, I'm incarcerated, and there's a
19 --

20 THE COURT: You want to be held without bail?

21 DEFENDANT LABRIOLA: I'm sorry?

22 THE COURT: Do you want to be held without bail?

23 DEFENDANT LABRIOLA: I n the pending case of
24 Mauro, why not? I'm incarcerated. Exonerate the bail
25 so that my parents can get the money back. I moved on

1 a 2255 motion that this thing is pending since last¹⁴
2 August, and that your Honor -- here's another argument
3 I have.

4 THE COURT: How much bail do you have up?

5 DEFENDANT LABRIOLA: With the Government, \$15,000.00
6 in that case, \$5,000.00 in the Jersey case. Judge
7 Whipple is going to exonerate that bail. There was no
8 problem.

9 Your Honor, what's the problem with bail if I'm
10 incarcerated?

11 THE COURT: Well, the problem with bail, in the
12 event the matter should be resolved, you would have a
13 right to bail. If you have the right to bail --

14 DEFENDANT LABRIOLA: Your Honor would have to
15 reinstate it.

16 Your Honor, there's another argument that I have.
17 August 10th of last year I filed a Petition to Show
18 Cause. The Clerk of the Court, and I have a letter
19 from him, said that it wasn't the proper vehicle. That
20 I had to file a 2255. I pointed out to him that at
21 that time there was a petition for writ of certiorari
22 pending --

23 MR. FRIED: Your Honor, that's an entirely different
24 case.

25 DEFENDANT LABRIOLA: It's old business, and over

1 the years. The Clerk of the Court sent me a letter
2 saying that they would not accept the 2255.

3 MR. FRIED: For the record so we don't confuse
4 it, Mr. Labriola is now talking about --

5 DEFENDANT LABRIOLA: I'm talking about --

6 MR. FRIED: 75CR 659(s), docket number 73CR972.
7 The conviction in this Court for forgery of U.S.A.
8 savings bonds, on which he's now serving a five year
9 conviction has been affirmed. We are no longer on
10 the 75CR 659(s).

11 THE COURT: I understand that.

12 THE DEFENDANT LABRIOLA: Your Honor, I pointed out
13 to him that a Petition for writ certiorari pending--

14 THE COURT: It was dismissed.

15 DEFENDANT LABRIOLA: Let me finish, your Honor.

16 I believe at that time in August of last year that
17 my proper vehicle was a Petition to Show Cause, and
18 not a 2255 motion. They wrote me a letter which I
19 have, saying that they will not accept it unless I
20 go vis-a-vis a 2255 motion. Only to have it dis-
21 missed for lack of jurisdiction. That the Government
22 claimed without giving me a written nothing to answer,
23 because the cases they used were wrong.

24 THE COURT: You could consent to the trial.

25 DEFENDANT LABRIOLA: Yes, your Honor.

1 That's one of the points, major points, in--

2 THE COURT: One is you said that you didn't con-
3 sent.

4 DEFENDANT LABRIOLA: That's correct.

5 The Government did not give me no papers so I
6 could have rebutted. In the cases they used, they were
7 all wrong. The reason for that, I could give it to him
8 now, although moot.

9 THE COURT: You had more time to study it.

10 DEFENDANT LABRIOLA: That's true. But I will tell
11 you one thing. I have never seen people who --
12 under Bandi vs. the United States, under the 2255
13 motion, I now ask for bail pending the litigation of
14 the 2255.

15 THE COURT: That will have to be denied under
16 Bandi.

17 DEFENDANT LABRIOLA: Then I make another application
18 your Honor, a Nelson application, your Honor.

19 THE COURT: Nelson?

20 DEFENDANT LABRIOLA: That is obvious that there's
21 going to be relief, and under that, under Nelson I'm
22 entitled to bail.

23 THE COURT: What relief is there going to be?

24 DEFENDANT LABRIOLA: Your Honor, either I'm going
25 to get a new trial or the Interstate Agreement Act comes

1 into place.

2 THE COURT: New trial on the what?

3 Bifurcated trial?

4 DEFENDANT LABRIOLA: That's right. Your Honor, I
5 don't think they are going to get away with the fact
6 that it wasn't an intelligent waiver.

7 THE COURT: Sure. We have a case that came down--

8 DEFENDANT LABRIOLA: I never put anything in writ-
9 ing or whether or not your Honor, the Interstate Agree-
10 ment Act, is another major point of law, plus I believe
11 that I was denied due process there. I didn't know
12 I was a predicate felon. Everything was to be made
13 run concurrent. That never came out. Under the major
14 issues of law I cannot see why I cannot be granted
15 bail pending a hearing. I have a Court Order from
16 you from January 21st that was postponed to February
17 4th. February 4th, that was postponed, because they
18 said that you had no jurisdiction. Now, you have had
19 jurisdiction. You granted my motion. They said you--

20 THE COURT: The cases that the certiorari proceed-
21 ing involved, the Supreme Court had taken so long to
22 decide it, I thought that it was unfair to decide it.
23 If it took them --

24 DEFENDANT LABRIOLA: It took them eleven months.

25 THE COURT: As soon as they denied certiorari, they

1 immediately revoked the bail that I had set.

2 DEFENDANT LABRIOLA: But now, your Honor, you
3 do have jurisdiction. This thing was there since
4 August 10th of last year. I'm entitled to a hearing.

5 THE COURT: What do you say to that?

6 MR. FRIED: Well, simply, your Honor, the 2255

7 --

8 THE COURT: Do you want a hearing on whether you
9 waived intelligently?

10 DEFENDANT LABRIOLA: There are six major points.

11 THE COURT: One is you didn't give consent. You
12 didn't waive intelligently the --

13 DEFENDANT LABRIOLA: Interstate Agreement Act.

14 THE COURT: We are waiting for that to find out
15 whether it applies to you or not.

16 DEFENDANT LABRIOLA: Due process, I was denied
17 that. I didn't know I was a predicate felon. There
18 was inadequate felon, and my last attorney, Robert
19 Weisswasser, submitted an affidavit admitting that
20 he didn't properly defend me.

21 THE COURT: He said that?

22 THE DEFENDANT LABRIOLA: That's correct.

23 I submitted that affidavit in support of the 2255.

24 THE COURT: I was the judge in that; right?

25 THE DEFENDANT LABRIOLA: Yes, you were, your

1 Honor.

2 THE COURT: I didn't see any incompetence involved.

3 MR. FRIED: Your Honor, there's a simple answer.

4 THE COURT: As a matter of fact, you didn't want
5 a lawyer when you first came. Remember you stood there,
6 and I didn't know your name at that time. I know it
7 now. But, you stood there and you were eighty pounds
8 heavier. That's how I remember, and you stood there
9 and said, "I am representing myself," and I gave you
10 that old addage that a person that represents himself
11 has a fool for a client. Remember I said that?

12 DEFENDANT LABRIOLA: And I was a damn fool to
13 have an attorney by the name of Robert Weisswasser.

14 THE COURT: One year in law school made you that
15 good?

16 DEFENDANT LABRIOLA: No. I'm not that good, your
17 Honor. At least I do it honestly. That's the difference
18 when it's done from the heart and honestly looked
19 it up in behalf of a client or in behalf of yourself.
20 You have a much better chance than having an attorney
21 just going through the motion that doesn't give one
22 care.

23 THE COURT: Well I wouldn't say that.

24 MR. FRIED: I think it's inappropriate to go
25 on attacking an attorney who is not present to defend
himself. In any event, there's no pending 2255 motions.

1 It was dismissed by the Order of this Court.

2 DEFENDANT LABRIOLA: I put in a motion to reinstate
3 March 3rd.

4 THE COURT: But did I grant that motion? I didn't
5 grant it. I didn't grant your motion to reinstate your
6 2255, not that I know of.

7 DEFENDANT LABRIOLA: Your Honor, I spoke to Mr.
8 Frank, and he told me.

9 THE COURT: I know you call him quite frequently.

10 THE DEFENDANT LABRIOLA: Yes, I do, your Honor.
11 I like to know if I'm going to be in Court.

12 THE COURT: Sometimes they feel that he has to
13 wait for your phone call before we can do anything in
14 the day.

15 DEFENDANT LABRIOLA: Well, your Honor, you mean to
16 tell me now as I stand here -- I would like to know,
17 do I have to file a new 2255?

18 THE COURT: We will take a look at it. You will
19 be notified by Mr. Frank as to whether or not it's been
20 reinstated or not, and whether or not I want you to
21 file a new one.

22 DEFENDANT LABRIOLA: Judge, you denied that without
23 prejudice, saying I could reinstate as soon as, if
24 I was denied cert. Now, I have exercised the option
25 to reinstate.

THE COURT: I will take a look at it.

2 DEFENDANT LABRIOLA: I also ask to remain at
3 M.C.C. until this is all finished with, because I'm
4 also involved with Berton Roberts on a jurisdiction
5 --

6 THE COURT: Berton Roberts?

7 DEFENDANT LABRIOLA: I'm sorry, your Honor, the
8 Honorable Berton Roberts.

9 I apologize.

10 That was a slip of the tongue.

11 MR. FRIED: Your Honor, now that Mr. Labriola is
12 in Federal custody, it's our position that due to the
13 overcrowding at the M.C.C., if Warden Taylor needs that
14 space, he can go to a Federal institution and be
15 brought back by marshals.

16 THE COURT: Which institution?

17 MR. FRIED: I--

18 DEFENDANT LABRIOLA: Danbury for over a year.

19 THE COURT: That's not too far. It takes you
20 longer to get to Danbury.

21 DEFENDANT LABRIOLA: The Honorable Berton Roberts
22 had appointed two attorneys for me. They have --
23 first I have a case in Jersey under the same issue.
24 The Judge Whipple, the Honorable Judge Whipple has
25 issued a Court Order to make me remain in M.C.C. until

1 May 16th. Only until all issues are solved, it further
2 prejudices me by putting me back in Danbury. I
3 can't talk to my attorneys.

4 THE COURT: I will get in touch with the Warden.
5 If the Warden says you have no right there, as far as
6 overcrowding, I will consider it. I will consider
7 transferring you. That's what I will do. I will get
8 in touch with the Warden.

9 DEFENDANT LABRIOLA: Your Honor, when is this
10 decision on for Interstate Agreement Act?

11 THE COURT: I just reserved decision. I don't
12 give dates, when I'm going to give a decision.

13 DEFENDANT LABRIOLA: I implore this Court to give
14 a quick decision. Everyday I'm in jail it's unnecessary.
15 It's totally unnecessary.

16 MR. HYMAN: Be optimistic.

17 DEFENDANT LABRIOLA: I'm not optimistic. T his
18 time I'm a winner.

19 THE COURT: If you changed your ways, of life,
20 you might have been a winner.

21 DEFENDANT LABRIOLA: I know that.

22 THE COURT: Because you are not a stupid man.
23 That's the unfortunate part about you standing before
24 me. If you had dealt with the right people and stayed
25 with the right kind of people, seen how much trouble you

1 would get into you wouldn't be there today. That's
2 just a word of advice to people who get involved and
3 shouldn't.

4 DEFENDANT LABRIOLA: You're right, your Honor.
5 The book isn't closed.

6 You know, some day I might make it. You might
7 be very proud of me.

8 THE COURT: What makes me proud is a human being.

9 MR. FRIED: It just occurred to me that since there
10 is at least --now we've got notice of this demand,
11 under the Interstate Agreement Act, that I'd request
12 that at least as of this point the Court make a finding
13 that there's good cause for --

14 THE COURT: There is good cause at this point.
15 Send him back to M.C.C. Hold him there until I get
16 --

17 MR. PELTZ: Your Honor, Mr. Labriola respectfully
18 requests your Honor to articulate the fact finding
19 based on good cause.

20 THE COURT: I did articulate. We are waiting for
21 two cases from the Court of Appeals. One is on the
22 basis of direct activity; secondly, on the basis of
23 whether or not I have reinstated the 2255, on the
24 cases I am not familiar with at this point, because
25 I only came out for one motion today.

1 In addition, I find under those circumstances
2 that due cause, all the papers that have to be filed
3 by the other defendant involved, and the Government has
4 a right to reply to a dismissal motion. There are a
5 number of reasons for due cause.

6 MR. FRIED: Thank you.

7 THE COURT: If you want some more I can rattle
8 some more. I don't have anything before me. I just
9 do it that way.

10 (Whereupon, these proceedings were concluded.)

11 * * * * *

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ APR 19 1977 ★

TIME A.M. _____
P.M. _____

----- X
UNITED STATES OF AMERICA

- against -

PAUL LABRIOLA and
THOMAS CONTINO, et al.,

Defendants.
----- X

75 CR 659(S)

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A' 134 3

UNITED STATES DISTRICT COURT
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- - - - - X

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INTRODUCTION

Defendants Philip Labriola and Thomas Contino move for dismissal indictment 75 CR 659(S) on the ground that Article IV(e) of the Interstate Agreement on Detainers, 18 U.S.C. App. ("Agreement") was violated when the United States returned them to their respective State institutions where each had been serving a State sentence, without having first been tried on the federal indictment. ^{1/} The defendants, by this motion made prior

1/ Concededly, both Labriola and Contino were serving State sentences on March 30, 1976 when brought to this court pursuant to writs of habeas corpus ad prosequendum, 28 U.S.C. §2241(c)(5), for arraignment on Indictment 75 CR 659(S).

(a) Labriola: On December 9, 1974, he was sentenced to a term of 4-8 years for robbery in the first degree by the Supreme Court of the State of New York (N.Y. County). He began service of this sentence on March 19, 1976, at Rikers Island, Rikers Island, New York. On March 30, 1976, as noted above, he was brought from Rikers Island to this court by U.S. Marshals and on April 7, 1976, returned to Rikers Island. On April 20, 1976, Labriola was transferred by State authorities to Sing Sing Prison, Ossining, New York. Thereafter, on April 26, 1976, pursuant to a new writ of habeas corpus ad prosequendum, Labriola was taken from Sing Sing Prison into federal custody for trial on Indictment 75 CR 659(S), scheduled to commence, April 29, 1976. On April 29, 1976, following the selection of a jury, Labriola moved to dismiss this indictment on the ground that the Agreement had been violated. He has, since April 26, 1977, been continuously confined in federal custody: on June 29, 1976 he was released from the State sentence on bail pending a State appeal and immediately began serving a 5 year federal sentence imposed in an unrelated case, 73 CR 972 E.D.N.Y. (forgery of U.S. Savings bonds, 18 USC §§371 and 495).

1/ footnote con't.

b) Contino: On October 10, 1975, he was sentenced to a term of 6 months for promoting gambling in the second degree by the Supreme Court of the State of New York (Kings County). This sentence was to run consecutive to a federal sentence Contino was then serving. On January 30, 1976, he began serving the State sentence. Thereafter, on March 30, 1976, as noted above, Contino was brought to federal court from Rikers Island, Rikers Island, New York and returned the same day to State custody. On April 29, 1976, pursuant to a new writ of habeas corpus ad prosequendum, Contino was taken from Rikers Island and produced in this court for trial. Following the selection of jury, he moved to dismiss the indictment on the ground that the Agreement had been violated. Contino remained in federal custody until May 25, 1976 when he was released in \$1,500 bail, following his discharge from State custody to active probation.

to the decision in United States v. Mauro, 544 F.2d 588 (2d Cir. 1976), petition for rehearing or rehearing en banc filed December 9, 1976 (decision pending), where the Court of Appeals for the first time in this or any other Circuit applied Article IV(e) sanctions against the United States, argued that the indictment should be dismissed. ^{2/}

Its our position that the motion to dismiss indictment 75 CR 659(S) should be denied because the Mauro decision, rendered October 26, 1976, should be held applicable only to cases in which the sentenced State prisoner had been returned to State custody without trial or final disposition of the federal indictment after October 26, 1976. ^{3/}

^{2/} The Mauro case has been followed in at least two other circuits and rejected in one. See United States v. Sorrell, ____ F.2d ____ (3d Cir. 1976) aff'd. 413 F. Supp. 138 (E.D.Pa. 1976), opinion withdrawn January 27, 1977 and rehearing en banc scheduled for May 12, 1977; United States v. Kenan, Dkt. No. 76-157 (D. Mass. October 28, 1976), appeal pending; contra, United States v. Scallion, Dkt. No. 74-4246 (5th Cir., March 18, 1977).

^{3/} We see little comfort to defendant's in the fact that in the Mauro case, by orders dated April 26, 1976 (Mauro) and April 29, 1976 (Fusco), both entered on May 17, 1976, Judge Bartels granted the motions to dismiss. 414 F. Supp. 358 (EDNY, 1976). Certainly, the decision of one judge of a multiple judge district court does not bind other judges in the same district. Hartley v. Sioux City New Orleans Barge, Inc., 247 F. Supp. 1015, 1018. (W.D. Pa., 1965) ("we are not required to follow a

3/ footnote con't.

rule of law enunciated by a colleague in a different case"). Cf. United States v. Alexander, 333 F. Supp. 1213, 1214 (D.D.C., 1971). While it has been said that the earlier ruling should ordinarily be followed, Bartels v. Sperti, Inc., 73 F. Supp. 751, 754 (SDNY, 1947), the rationale has been to avoid judge-shopping, United States v. Aluminum Co. of America, 2 F.R.D. 224, 234 (SDNY, 1941). Such rationale is, of course, inapplicable here.

Before turning to the argument on non-retro-activity of Mauro, we deem it appropriate to note that there is presently pending before the Second Circuit the case of United States v. Chico and Colello, Dkt. No. 77-1016 argued on March 31, 1977. Although not raised in the briefs, the issue of propectivity of Mauro was squarely posed at oral argument of the Chico appeal.

ARGUMENT

UNITED STATES v. MAURO, ^{4/} APPLY-
ING ARTICLE IV(e) OF THE INTER-
STATE AGREEMENT ON DETAINERS SHOULD
BE HELD APPLICABLE ONLY WHERE THE
SENTENCED STATE PRISONER WAS RE-
TURNED TO STATE CUSTODY AFTER
OCTOBER 26, 1976, THE DATE OF THE
MAURO CASE.

In United States v. Mauro, 544 F.2d 588 (2d
Cir. 1976), petition for rehearing or rehearing en
banc filed December 9, 1976 (decision pending), the
Court of Appeals, on October 26, 1976 for the first time
in this Circuit (or any other Circuit), held that the
provisions of the Interstate Agreement on Detainers, 18
U.S.C. App., are implicated when the United States obtains
physical custody of a sentenced State prisoner, even though
such prisoner is produced by means of a writ of habeas
corpus ad prosequendum issued under 28 U.S.C. §2241(c)(5).
It was the clear finding of Mauro that such writ is the
equivalent of "the detainer provided for in the Agreement"
(Id. at p. 594). Mauro expressly went on to hold that if

^{4/} 544 F.2d 588 (2d Cir. 1976), petition for rehearing or
rehearing en banc denied, March 15, 1977. The Solicitor
General has advised that he intends to petition for
Certiorari in Mauro.

such prisoner is returned to State custody without having first been tried on the federal indictment, Article IV(e) of the Agreement requires that the federal indictment be dismissed with prejudice.

In concluding that the sanction of Article IV(e) applied to the United States, the majority opinion (per Mulligan, J.) recognized that the Agreement was designed to permit the "expeditious disposition of pending charges in another jurisdiction" (544 F.2d at 592). But in addition to this purpose, the Court stated that it was the Congressional "aim to eliminate the uncertainties which obstruct programs of prisoner treatment and rehabilitation" (Ibid.). In this regard, the Agreement was designed to prevent prosecutors from "shuttling" prisoners back and forth between their respective jurisdictions (Ibid.). Or, as recently explained in United States v. Ford, Docket No. 76-1319, Slip op. 1681 (2d Cir., February 3, 1977), petition for rehearing or rehearing en banc pending, the Agreement was expected to avoid the "disadvantages and potential abuses" of a system where "once one of the jurisdictions had tried and convicted him, the other jurisdictions, instead of trying him on their charges, would simply file detainers with the prison authorities holding him." (Slip

op. 1687-88). Prior to the Agreement, there was no way that a prisoner could clear the detainer and as a result he suffered serious consequences with regard to parole, rehabilitative programs and the like. This vice, according to Mauro, was not confined to situations where a traditional detainer had been used but also extended to where a State prisoner has been produced on a writ in federal court and returned (544 F.2d at 593).

Clearly, therefore, the Agreement proscribed certain longstanding prosecutorial practices and "provided prosecutors with a uniform set of rules governing temporary transfers for purposes of trial". United States v. Ford, supra at 1694. Accordingly, and in keeping with this scheme, Article IV(e) provides for the dismissal of an indictment (or information) with prejudice where the prisoner is returned to the original place of imprisonment prior to trial on the indictment. In effect, Congress has created a statutory exclusionary rule preventing further proceedings where Article IV(e) has been violated.

It is the exclusionary nature of the Article IV(e) sanction, a legislative-made prophylactic device

unrelated to the integrity of the fact finding process, now held applicable to the United States by Mauro, that warrants according only prospective application to the Mauro case.

While the question of determining retroactivity has been the subject of much effort by the Supreme Court, Annot. United States Supreme Court's Views as to Retroactive effect of Its own Decisions Announcing New Rules, 22 L.Ed. 2d 821 (1970), by the Courts of Appeals, e.g., United States ex rel. Angelet v. Fay, 333 F.2d 12 (2d Cir. 1964) (en banc), as well as of extensive scholarly comment, e.g., Beytagh, Ten Years of Non-Retroactivity: A Critique and a Proposal, 61 Va. L.Rev. 1555 (1975), the Court has consistently given only prospective application to every case involving an exclusionary rule which was unrelated to the "integrity of the factfinding process." United States v. Peltier, 422 U.S. 531, 535 (1975). Therefore, it is our contention that the Mauro application of the Agreement's exclusionary rule, Article (IV) (e), should be similarly treated. Analysis of the Supreme Court's standards for

determining the retroactivity issue compel this result.^{5/}

These standards, as stated in Desist v. United States, 394 U.S. 244, 249 (1969) quoting from Stovall v. Denno, 388 U.S. 293, 297 (1967), are as follows:

"The criteria guiding resolution of the [retroactivity question] implicate (a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards and (c) the effect on the administration of justice of a retroactive application of the new standards."

This-three pronged test has been only recently applied and approved in United States v. Peltier, supra and United States v. Bowen, 422 U.S. 916 (1975). In Peltier, the Court held Almeida-Sanchez v. United States 413 U.S. 266

^{5/} We contend that this argument of prospectivity is not undercut by the two recent decisions of the Second Circuit applying the Mauro decision to cases pending on direct appeal, although the return of the prisoners occurred before October 26, 1976. United States v. Cyphers, Dkt. No. 76-1131, Slip op. 1737 (2d Cir., February 8, 1977) petition for rehearing or rehearing en banc pending; United States v. Ford, Supra. In neither of these cases was the retroactivity issue raised either in the briefs or at oral argument. Therefore, since those cases were decided without treatment of retroactivity principles they should not be "interpreted as establishing any retroactivity limitation of general application." United States v. Peltier, 422 U.S. supra at 535, n. 5.

(1973) (proscribing "roving" Border Patrol searches) applicable only to searches occurring after the date of the decision. Applying the Stovall standards, the majority opinion concluded that there is nothing in the exclusionary rule qua exclusionary rule that requires retroactive application. (Id. at 542.)

Turning to the three-pronged standards. Initially it is necessary to determine the purpose sought to be served by the Congressional exclusionary rule set forth in Article IV(e), now held applicable to the United States by the Mauro case. As set forth above, the rule was embodied in the Agreement in order to proscribe the prosecutorial practice of "shuttling" prisoners back and forth between jurisdictions with resulting consequences to institutional rehabilitative programs, parole plans, and "disruptive effect upon the prisoner's morale." United States v. Mauro, 544 F.2d supra at 593. Or, as cogently put by Judge Timbers in dissent in Cyphers, "[i]t bespeaks a judgment that only the ultimate sanction of dismissal of the indictment will insure the government's compliance with the Agreement's purpose of securing the expeditious disposition of charges which require the lodging of detainers" (Slip op. 1751).

Certainly, these purposes would not be advanced by retroactive application of Mauro. The transfer in all such cases, whether pending direct review or collateral attack, "has already occurred and will not be corrected by releasing the prisoners involved" Desist v. United States, 394 U.S. supra at p. 249.

It is only when the purpose to be furthered by the exclusionary rule concerns "an aspect of a criminal trial that substantially impairs its truth-finding function and so raises serious questions about the accuracy of guilty in past trials", Williams v. United States, 401 U.S. 646 653 (1972), that the new rule has been applied retroactively. The need to avoid or minimize arbitrary or unreliable results is paramount and the Court, in such instances, has rejected both "good faith reliance by state or federal authorities on prior constitutional law or accepted practice" and arguments concerning the "severe impact on the administration of justice". (Id.; emphasis added.)

We submit that the evident purpose of the Article IV(e) exclusionary rule is unrelated to the factfinding process. Certainly the Agreement was designed to expedite the disposition of outstanding charges in other jurisdictions

in order to avoid speedy trial problems. Senate Report No. 91-1536, 91st Cong., 1970 U.S. Code Cong. & Admin. News, 4864; Smith v. Hooey, 393 U.S. 374 (1968).

However, even if this right be construed to relate to the factfinding process, e.g. diminished witness recall, Article IV(e) may not be invoked to vindicate such right. The appropriate provision in the Agreement is Article IV(c).^{6/} See, United States v. Ford, supra. Since the rule, then, does not implicate the integrity of the judicial process, the criteria of reliance and impact must be examined.

We contend that there has been good faith reliance by the Government in utilizing the writ of habeas corpus ad prosequendum as independent and distinct from the detainer process provided for in the Agreement. Indeed, as far as we have been able to determine, in every case involving the production of State prisoners in federal court, in this district and elsewhere, it has been the consistent, regular and uniform practice of federal prosecutors to apply to the district court for such writs and

^{6/} There is, of course, no claimed violation of Article IV(c), nor can there be.

upon the conclusion of the particular proceeding, to move for satisfaction of the writ and the return of the State prisoner the original state institution. Indeed, on many occasions the district judge, absent a request by the prosecutor would sua sponte order the prisoner so returned. E.g., United States v. Mauro, 544 F.2d supra at 590. Upon return of the prisoner, the writ would be satisfied and there would be no "prejudicial consequences for the prisoner" United States v. Mauro, 544 F.2d supra, at pp. 596-97 (dissenting opinion per Mansfield, J.). Thereafter, the State prisoner would be again "writted" to federal court for his next court appearance or for trial. Of course in a limited number of cases, for reasons of distance, or imminence of trial, or to accommodate a request by defense counsel for easy access to his client, or other particular reason, such a prisoner may have been kept in federal custody. But such retentions were clearly not the rule.

This reliance on the writ as not implicating the Agreement, and especially its sanctions was, in our opinion, justified and reasonable. It was universally

so understood by the district court judges and defense counsel. We think that no other conclusion is possible. Indeed, it would have hardly been an "accepted practice", United States v. Williams, 401 U.S. supra at 653, if the law enforcement authorities had any inkling that their conduct did not conform to the prevailing "statutory...norm" United States v. Peltier, 422 U.S. supra at 542. Reinforcing this conclusion is the emphatic dissenting opinion of Judge Mansfield in Mauro and the statement of 12 of the 15 members of the original Senate Committee on the Judiciary which reported on the original bill recommending adoption of the Agreement.^{7/} Accordingly, the reliance by the Government on the position that the writ of habeas corpus ad prosequendum was not a "detainer" under the Agreement with the corollary understanding that the Agreement was not involved was reasonable, and under the circumstances, justified.

The final factor concerns the effect on the administration of justice that retroactive application

^{7/} Set out in part in Judge Mansfield's dissenting opinion (544 F.2d at 574):

The committee does not intend, nor does it believe that the Congress in enacting the Agreement in 1970 intended, to limit the scope and applicability of that writ.

of the Mauro case would produce. Simply stated, such retroactive application would require reversal of almost each and every case in which a sentenced State prisoner has been convicted in federal court.^{8/} Such a result is plainly unwarranted and would wreak havoc with the administration of justice and would yield a windfall benefit to those federal defendants who were, by ironic hindsight, fortunate enough to be serving a State sentence at the time of their federal proceedings.^{9/} On the other hand, co-defendants who happened to be State prisoners who were not sentenced at the time of their federal proceedings or federal prisoners would stand convicted following the very same trial. Such a result would be intolerable and unwarranted.

The Supreme Court in Gosa v. Mayden, 413 U.S. 665, 685 (1973), held O'callahan v. Parker, 395 U.S. 258 (1969) to be prospective only, and recognized the impact

^{8/} In a limited number of cases, as stated above, the State prisoner may have been retained in federal custody. However, inquiry of the Administrative Office of United States Courts revealed that there are no relevant statistics from which we can even begin to estimate the number of cases involved.

^{9/} The Agreement by its express terms, is inapplicable to unsentenced State prisoners. Article III(a); see, United States v. Roberts, Docket No. 76-1670 (6th Cir., February 2, 1977).

on society of the retroactive application of a standard that was unrelated to the accuracy of a prior adjudication of guilt:

Wholesale invalidation of convictions rendered years ago could well mean that convicted persons would be freed without retrial, for witnesses, particularly military ones, no longer may be readily available, memories may have faded, records may be incomplete or missing, and physical evidence may have disappeared. Society must not be made to tolerate a result of that kind when there is no significant question concerning the accuracy of the process by which judgment was rendered or, in other words, when essential justice is not involved.

Similarly, in Stovall v. Denno, supra, the Court stated that holding retroactive United States v. Wade, 388 U.S. 218 (1967) and Gilbert v. California, 388 U.S. 263 (1967), would seriously disrupt the administration of the criminal laws. See also, Daniel v. Louisiana, 420 U.S. 31 (1975) denying retroactive effect to Taylor v. Louisiana, 419 U.S. 522 (1975) and DeStefano v. Woods, 392 U.S. 631 (1968) denying retroactive effect to Duncan v. Louisiana, 391 U.S. 145 (1968).

We contend that there is simply no justification to order the release of large numbers of federal prisoners

who have been found guilty by trustworthy evidence (or on pleas of guilty). There has been general and proper, we submit, reliance on the separateness of the Agreement and the ad prosequendum writ, a construction now discredited by Mauro. However, since such decision was certainly not foreshadowed, clearly or otherwise, we contend that it would be inequitable to apply that decision to any prisoner who was returned to state custody prior to October 26, 1976, the date of the decision.

In addition to our argument that the Mauro holding, applying Article IV(e) to the United States should be treated as a legislative-made exclusionary rule, we contend that since Mauro concerns a new (or for the first time) statutory interpretation, retroactive application would not be proper. In Halliday v. United States, supra, the Court held nonretroactive McCarthy v. United States, 394 U.S. 459 (1969) which construed Rule 11 of the Federal Rules of Criminal Procedure.^{10/} In discussing

^{10/} Of Course in Halliday, the court stated that:

In McCarthy we took care to note that our holding was based solely upon the application of Rule 11 and not upon constitutional grounds. Nevertheless, it is appropriate to analyze the question of that decision's retroactivity in terms of the same criteria we have employed to determine whether constitutionally grounded decisions that depart from precedent should be applied retroactively. See Linkletter v. Walker, 381 U.S. 618, 622-629 (1965). (394 U.S. supra at 832).

the Halliday decision, the Seventh Circuit in a different context, stated that "[w]hile the standards for determining questions of retroactivity have been developed in the context of adjudication of constitutional questions, a decision based on statutory interpretation may be similarly limited". Bailey v. Molley, 530 F.2d 169, 173 (7th Cir. 1976) (emphasis added).

Thus, the fact that Mauro involved a question of statutory interpretation is not of particular moment. If anything, it should point to nonretroactivity since no fundamental or basic constitutional right is involved or sought to be protected. To hold otherwise would improperly penalize the Government which, as shown above, properly relied on the Writ. Moreover, there is Supreme Court precedent for such an approach.

In Fuller v. Alaska, 393 U.S. 80 (1968), the Court declined to retroactively apply Lee v. Florida, 392 U.S. 378 (1968), which construed Section 605 of the Federal Communications Act, 47 U.S.C. §605, to be a legislative-made exclusionary rule. Relevant also, in this regard, is Allen v. State Board of Elections, 393 U.S. 544, 572 (1969) where the Court gave a broad reading to Section 5

of the 1965 Voting Rights Act, 42 U.S.C. §1973(c), but then gave purely prospective operation to the decision. See, Chevron Oil Co. v. Huson, 404 U.S. 97 (1972); Morrissey v. Brewer, 408 U.S. 471, 490 (1972) where the Court gave wholly prospective application to its holding regarding minimal due process requirements for parole revocations; and Hill v. Stone, __U.S.__, 95 S.Ct. 1637 (1975); cf., Lemon v. Kurtzman, 411 U.S. 192, 207-8 (1973)

where the Court held that reliance on legislation, later held unconstitutional, was justified, and the invalidating decision would not be held retroactive.

In sum, we contend that the Mauro decision should be given prospective effect only, that is, the holding should be applied only to cases in which the sentenced State prisoner was returned to State custody after October 26, 1976, the date of the decision. To hold otherwise in the absence of any unfairness in the trial, where there has been extensive good faith and justified reliance upon the "accepted practice" existing prior to the Mauro decision, where the impact on the administration of justice would to permit the release of large numbers of persons who, absent the fortituous circumstance of a state sentence, received a fair trial

would be chaotic. We believe that, as Judge Medina aptly said in a related context:

In the absence of any fundamental unfairness to the defendant, or doubt as to the reliability of the evidence admitted, it seems clear that the People of the State of New York have a definite and legitimate interest in seeing that the sentence imposed upon him is fully executed. (United States ex rel. Angelet v. Fay, 333 F.2d supra at 20).

Accordingly, we submit that Mauro should be held nonretroactive. To do otherwise would unwarrantly frustrate the ends of public justice.

CONCLUSION

Wherefore, the Motion to dismiss indictment
75 CR 659(S) should be in all respects denied.

Dated: Brooklyn, New York
April 19, 1977

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York

BERNARD J. FRIED
Assistant U.S. Attorney
Chief, Appeals Division

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

DOLORES M. BYRD, being duly sworn, says that on the 19th
day of April 1977, I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, a GOVERNMENT'S MEMORANDUM OF LAW
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper
directed to the person hereinafter named, at the place and address stated below:

Philip Peltz, Esq.
32 Court Street
Brooklyn, New York

Steven J. Hyman
One Lexington Avenue
New York, New York 10017

Sworn to before me this
19th day of April 1977

[Signature]
Dolores M. Byrd

A 159

LAW OFFICES
OF
PHILIP PELTZ

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

(212) 872-4333

★ AUG 09 1977 ★

TIME A.M. _____ 32 Court Street, Brooklyn, New York 11201
P.M. _____ TENTH FLOOR

PHILIP PELTZ

CAROL MELLOR

April 19, 1977

Hon. Mark A. Costantino, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East Brooklyn, New York 11201

Re: U.S.A. v. Paul Labriola
75 CR 659S

HONORABLE SIR:

By order of this Court, I was re-appointed to represent Paul Labriola for the limited purpose pursuing this motion to dismiss the Indictment pursuant to the Interstate Agreement on Detainers.

Your Honor directed the Government to serve its latest set of papers in opposition to this motion on defendant by April 14. That date came and went without our receiving any papers. The defendant called chambers and was told that the Government had requested and was granted an extension of time. This extension was granted without knowledge of, notice to or consent by the defendant or this office. This makes Mr. Labriola feel I am merely serving as a convenient "buffer" and not his advocate.

As Your Honor well knows, this case has been adjourned many times during the past year pending determination of a similar issue in the United States Court of Appeals. Further, defendant has been anxious for and has sought determination of his motion for many months.

Considering the government's failure to observe even the most rudimentary courtesies and ^{ex} parte actions, I am now constrained to seek to be relieved from this case. Mr. Labriola's rights and remedies must be vigorously protected and pursued.

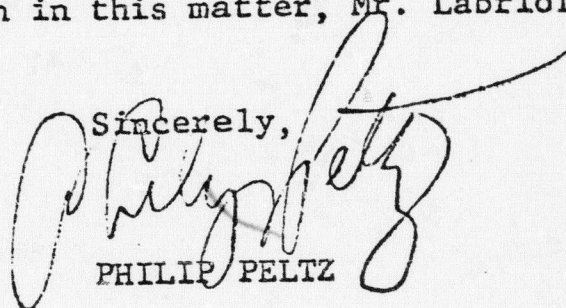
21

Hon. Mark A. Costantino, U.S.D.J.

April 19, 1977

I feel that I am not in the position to pursue Mr. Labriola's claims with the vigor, diligence and energy they deserve, i.e. without regard to the consequences. I have discussed this with Mr. Labriola who has agreed that to prevent this move from further delaying the decision in this matter, Mr. Labriola will proceed pro se.

Sincerely,

A handwritten signature in dark ink, appearing to read "Philip Peltz", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

PHILIP PELTZ

PP:svp

cc: U.S. Atty. E.D. Strike Force
Paul Labriola

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

THOMAS CONTINO,

Defendant.

DEFENDANT'S MEMORANDUM OF LAW

KUNSTLER & HYMAN
ATTORNEYS AT LAW
370 LEXINGTON AVENUE
NEW YORK, N. Y. 10017
Attorneys for Defendant

A 161
FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D.N.Y.

★ AUG 09 1977 ★

TIME A.M. _____

P.M. _____

75 CR 659 (S)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

75 CR 659 S

-against-

THOMAS CONTINO,

Defendant.

DEFENDANT'S MEMORANDUM OF LAW

Statement of Case

This memorandum is submitted in support of defendant Contino's motion to dismiss the indictment filed against him on the grounds that the terms of Article IV(e) of the Interstate Agreement on Detainers (18 U.S.C. App.) was violated when defendant was returned to state jurisdiction without first having been tried in the Federal Court on the charges against him. This motion was made by defendant on or about April 29, 1976.

On May 12, 1976 the District Court reserved decision on the case, pending determination of the issues in a similar case of U.S. v. Mauro, now reported at 544 F.2d 588 (2d Cir. 1976). The transcript of the court proceedings on May 12, 1976 indicates that the court put off decision on the case until the Court of Appeals decided the Mauro case. As the

Court stated:

"If you are willing, and I think this may be the answer to it, if you are willing to waive your Speedy Trial Rules on behalf of your clients and on behalf of your client, do so and put this case over without my signing this motion. Put this case over until such time the Court of Appeals does decide the motion.

The same memorandum is before Judge Bartels for dismissing the indictment. That way I would know exactly whether or not you should continue or whether it should be dismissed." (Transcript, at p. 13)

The Court further indicated

"I see no purpose in continuing while the issue is before another court or the Court of Appeals, which is directly related to the issues I have before me." (Transcript, May 12, 1976 at p. 14; see also at p.19)

The United States Attorney was asked specifically whether she had any objection to this procedure to delay both the decision on the motion and the trial pending a determination in Mauro and she stated:

"I have no objection to that." (Id. at p. 13)

Defendants likewise were questioned with regard to adjourning the case to await the Mauro decision since the question was intricately involved with defendant's right to a speedy trial. Thus counsel to Mr. Contino

"agreed to an adjournment until the Second Circuit reaches that [Mauro] decision." Id. at p. 17.

While reserving all other rights, the defendant himself was specifically questioned by the Court so that he could effectuate a knowing waiver of his speedy trial right. The transcript reveals the following colloquy:

"THE COURT: Mr. Contino, you would only be waiving a Speedy Trial right as of today forward. Any motions the lawyers have made prior to that time which I've denied and the motion that is reserved in this case, you do not have to go up on appeal, that could be proffered before the Court and you're not waiving that right.

DEFENDANT CONTINO: I understand that."

(Transcript, p. 17)

In October, 1976 the Mauro decision was handed down by the Court of Appeals. Notwithstanding that defendant Contino comes within the terms of the Mauro case as previously conceded by the Government, for the first time the Government now asserts the argument that the Mauro decision should only be applied prospectively from the date that the Court enunciated its decision. Defendant opposed such a contention.

POINT ONE

DEFENDANT CONTINO COMES WITHIN THE TERMS OF ARTICLE IV(e) OF THE INTER- STATE AGREEMENT ON DETAINERS

The Government concedes that defendant is entitled to the relief granted in Mauro under the Interstate Agreement on Detainers if the impact of that decision is to apply to defendant's situation. In fact, at the time that the trial was adjourned awaiting the Mauro decision, the Assistant U.S. Attorney, Marsha Katz, agreed that Mr. Contino's position was similar to that found in Mauro. As she stated:

"On their case, Mr. Contino's situation is somewhat the same." (Transcript, p. 8)

and that

"Mr. Contino's situation could be similar to the two cases before Judge Bartels."

and further stated

"I suggest that case [Labriola's] is different, but Mr. Contino's is not."

(Id. at p. 11)

It is thus clear that defendant's rights under the Interstate Detainer Agreement were in fact violated and that as the statute sets forth, the proper remedy is to dismiss the indictment. Defendant's pending motion made over a year ago, should be in all respects granted and the indictment dismissed.

POINT TWO

THE MAURO DECISION APPLIES WITHOUT
LIMITATION TO DEFENDANT'S CIRCUMSTANCE

The Government's claim that defendant Contino is not entitled to dismissal of the indictment because Mauro should not be applied retroactively, is without merit. The Court is respectfully referred to the brief of co-defendant Labriola in which defendant Contino joins.

It must be emphasized that the Government's argument against applying Mauro to defendant's circumstance while artful, is simply unsupported by law. The terms of

the Interstate Detainer Agreement were clearly set forth as was the remedy to be applied if the Agreement were violated. The Government can point to no case to support the proposition that under the circumstances in the case at bar the extraordinary remedy of nonretroactivity should be applied. This is not a case of novel constitutional interpretation, nor of judge-made law. In fact the Circuit Court has already seen fit to apply Mauro to other cases which arose prior to October 26, 1976 (see U.S. v. Cyphers, ___F.2d___, (2d Cir. 1977); U.S. v. Ford, ___F.2d___ (2d Cir. 1977)(petitions for rehearing are still pending in both cases.)

POINT THREE

THE GOVERNMENT SHOULD BE ESTOPPED
FROM ASSERTING THAT THE LAW AS
DEFINED IN MAURO SHOULD NOT APPLY
TO DEFENDANT

In May 1976 in open court, the defendant, the U.S. Attorney and the Court all agreed that further prosecution of the action against defendant and decisions by the Court on pending motions should be adjourned without date pending determination of the Mauro case. Based upon such agreement, defendant willingly waived his rights under the Speedy Trial Rule. Yet after over a year has elapsed, the Government now comes to this Court and says the determination in Mauro is irrelevant to defendant's case and that the indictment should be prosecuted notwithstanding the Court of Appeals

decision. Such a posture is, it is submitted, unconscionable and a deprivation of defendant's rights under the Sixth Amendment as well as the rights that accrue under the Speedy Trial Act (Title 18 U.S.C. §3161 et seq., Rule 50(b) of the Federal Rules of Criminal Procedure, and the Rules of the Second Circuit and the District Court relating to the procedures for achieving prompt disposition of criminal cases.

It would appear that the delay of defendant's trial was based upon a finding by the Court that a continuance served the ends of Justice (see paragraph (8)(A) of the Transitional Plan Pursuant to the Provisions of the Speedy Trial Act of 1974, as enacted by the Eastern District. See also paragraph (8)(A) of the Transitional Plan Pursuant to the Provisions of the Speedy Trial Act of 1974 set forth at 18 U.S.C. §3161(h).) The reasons for the continuance were set forth by the Court on May 12, 1976, clearly stating that it was the intent of the parties to await decision in Mauro so that the Court could know whether or not it "should continue or whether it should be dismissed" (Transcript, p. 13; see also pages 14, 17 and 19). The Government consented to such an arrangement (Transcript, p. 13) and of course defendant Contino and his attorney likewise consented. (Transcript pp. 16-17).

The intent of the parties, as can be gleaned from the transcript, was clearly to the effect that the decision in Mauro would control the case herein, particularly as regards

defendant Contino. It is for this reason that the Government attorney pointed out the distinction between defendant Contino and defendant Labriola with regard to the applicability under Mauro. (See Transcript, p. 9 and p. 11). Had the Government, at the time the agreement to defer further prosecution was arrived at, indicated that the Mauro decision, if successful for defendant Contino's position, would nevertheless be inapplicable to his case, there would have been no agreement to a continuance of the action. Rather, Contino would have pursued his motion to dismiss and his appropriate appellate remedies. The reasons set forth by counsel for Contino "of judicial economy and administration of justice" (Transcript, p. 17) would not have been applicable had Mauro not been intended to control Contino's situation.

In the end defendant Contino agreed to an adjournment, which has now extended to over one year in duration, in order to be told by the Government that the year spent was for the purposes of an academic exercise and that Mauro was not applicable to the defendant's situation. Had the Government timely indicated its position with regard to the decision by Judge Bartels in Mauro on May 12, 1976, defendant would have proceeded as he was entitled under law. In fact, it is submitted that his case might have well been joined with Mauro, thus precluding the Government's non-retroactivity claim now asserted.

It is submitted that should the Court accede to the Government's claim that Mauro is effective only as of the date of the decision by the U.S. Court of Appeals and that Contino should not have the benefit of the Court of Appeals interpretation of the Interstate Detainer Agreement, new issues will be raised with regard to Contino's rights under the Speedy Trial Act. It should be noted that at the time defendant agreed to the continuance of the case great pains were taken to insure no waiver of defendant's prior rights under a speedy trial. In view of the present posture of the Government, new issues will now be presented with regard to defendant's rights to a speedy trial. Such a question, however, will have to await this Court's determination on whether or not the Government's argument of non-retroactivity is to prevail in the circumstances of defendant Contino.

WHEREFORE, it is respectfully requested that defendant's motion for dismissal of the indictment pursuant to the Interstate Detainer Agreement as previously filed herein be in all respects granted.

Respectfully submitted,

KUNSTLER & HYMAN
Attorneys for Defendant

Of Counsel:

STEVEN J. HYMAN

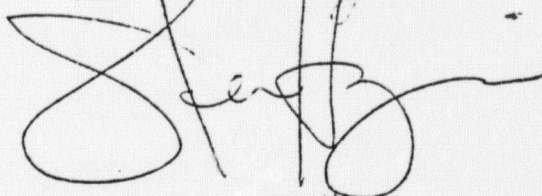
AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK }
COUNTY OF *New York* } SS.:

Patricia Mazza
being duly sworn, deposes and says; that deponent
is not a party to the action, is over 18 years of age
and resides at *Brooklyn, NY*
That on the *7th* day of *June* 19 *77*

deponent served the within *Defendant's*
Memorandum of Law
upon *David S. Trager, U. S. Attorney,*
Eastern District of New York
~~attorney for~~ *Att: Bernard J. Fried,*
Asst U.S. Attorney, Chief Appeals Division
in this action, at *225 Cadman Plaza East*
Brooklyn, NY 11201
the address designated by said attorney(s) for that
purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in ~~a~~
~~post office~~ — official depository under the ex-
clusive care and custody of the United States post
office department within New York State.

Sworn to before me,
this *7th* day of *June* 19 *77*

Patricia Mazza


STEVEN J. HYMAN
Notary Public, State of New York
No. 30-7027835
Qualified in Nassau County
Commission Expires March 30 1977

A 171

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

75 CR 659 S

-against-

PAUL LABRIOLA,

Defendant.

FILED

IN CLERK'S OFFICE

-----X-----
DISTRICT COURT E.D. N.Y.

★ APR 26 1977 ★

TIME A.M.

P.M.

DEFENDANT'S MEMORANDUM OF LAW

CAROL MELLOR,
Of Counsel

PHILIP PELTZ
Attorney for Defendant
32 Court Street
Brooklyn, New York 11201
212-852-4335

The Government's attempt to extricate itself from its admitted violation of law must fail. The principles and criteria set forth in United States v. Peltier, 422 U.S. 531 (1975), which form the basis of the Government's argument are clearly inapplicable to the situation before the Court.

There are three classes of cases, each with its own considerations and results, to which the Supreme Court has applied principles of retroactivity. Universal to all of these cases is the fact that in each the Court enunciated a "new" rule. As defined by the Annotation cited by the Government in its memorandum,

decisions are treated as having announced "new rules" and are discussed herein where the court either (1) has overruled earlier decisions or (2) though not overruling any earlier decisions has significantly extended or restricted rules which it had previously announced. Annot. United States Supreme Court's Views as to Retroactive Effect of Its Own Decisions Announcing New Rules, 22 L.Ed. 2d 821 (1970).

The Second Circuit in United States v. Mauro, 544 F.2d 588 (2d Cir. 1976) does neither. Although the decision may have come as an unwelcome shock to the

Government, the Second Circuit merely interpreted a statute which had been in full force and effect for over four years. There is no previous decision of the Second Circuit, or any other court, on which the Government can claim to have relied. Indeed, the situation here is completely opposite to that in Peltier. There the Court was reluctant to give retroactive application because the federal agents and government had relied upon a duly enacted statute and voluminous court interpretation thereof supporting their action. Here, the government has violated the statute. Thus the decision in Mauro can not be considered to be "new" in the sense required to apply the principles in Peltier.

The Court in Mauro labelled the question before it as one of first impression. The Government has attempted to convince this Court that it would be appropriate to apply the standards suitable to a change in prior statutory or decisional law. However, this decision cannot be deemed to have changed prior statutory or decisional law. The Second Circuit has stated, in another context, "It must be recognized that every case of first impression has a retroactive effect, whether the new principle is announced by a

court or by an administrative agency. N.L.R.B. v. Majestic Weaving Co., 355 F.2d 854,860 (2d Cir. 1966). Therefore, the cases relied upon by the Government are totally inapplicable here.

The conclusion reached by the Government is erroneous even if the Mauro decision is considered to be a "new" rule. The three categories to which theories of retrospectivity apply and the results in each, are, as analyzed by Mr. Justice Marshall, as follows:

In some cases, this Court has held that the trial court lacked jurisdiction in the traditional sense... These holdings have been made fully retroactive. . . In other cases the Court announced a rule that was central to the process of determining guilt or innocence, and whose application might well have led to the acquittal of the defendant.

. Those holdings too have been given retroactive effect. . . . All other constitutional rules of criminal procedure have been given prospective effect only. (Citations omitted).

Michigan v Payne, 412 U.S.47, 61,62 (dissenting opinion of Mr. Justice Marshall) (1973).

The concern in Peltier is the retroactivity of a new constitutional rule involving Fourth Amendment search and seizure rights, and thus fits into the third category. The uniqueness of the exclusionary rule, and its battered past and unsure future place it, in the decisions

of the Supreme Court, in a class unto itself. Mr. Justice Rehnquist, author of the Peltier opinion, at the outset distinguishes between cases involving the exclusionary rule and cases involving other constitutional principles. United States v. Peltier, 422 U.S. at 535. This distinction is very much in keeping with Mr. Justice Rehnquist's prior opinion in Robinson v. Neil, 409 U.S. 505 (1973), wherein the Court held the criterion set forth in Linkletter v. Walker (the same criterion relied upon by the Government herein) 381 U.S. 618 (1965), inappropriate to decisions involving the retroactivity of rulings other than exclusionary rulings.

In Robinson v. Neil, full retroactivity was given to a double jeopardy ruling. The Court stated

The guarantee against double jeopardy is significantly different from procedural guarantees held in the Linkletter line of cases to have prospective effect only. While this guarantee, like the others, is a constitutional right of the criminal defendant, its practical result is to prevent a trial from taking place at all, rather than to prescribe procedural rules that govern the conduct of a trial.

Robinson v. Neil, 409 U.S. at 509

The Mauro decision, if analogous to any of these cases, is analogous to Robinson v. Neil, and therefore full retroactive effect should be given to Mauro. As in Robinson,

the decision in Mauro prevents trial. The effect of the mandatory dismissal under the Interstate Agreement on Detainers is to deprive Federal courts of jurisdiction.

The Government labels the Interstate Agreement a "legislative-made exclusionary rule." We would point out that the fundamental difference between the right to bring a defendant to trial and the exclusion from introduction of evidence at trial was strongly enunciated by the Supreme Court in Robinson v. Neil, 409 U.S. at 509. We cannot understand what the Government contends is excluded or excludable by the Interstate Agreement. The label is a feeble attempt to convince the Court to apply the wrong criteria to the case before it. The exclusionary rule speaks to evidence admissible at trial; the Interstate Agreement speaks to whether the right to try to defendant has been lost by the Government's illegal act.

Complete denial of retroactive effect is neither legally supportable nor necessary to the administration of justice. As is eloquently argued by defendant in his pro se affidavit in opposition to the Government's memorandum, there is a serious question of estoppel here. It must be remembered that defendant stands before this Court untried and unconvicted. The Government's doomsday predictions of "release of large numbers of federal prisoners who have been

gulty)"(Governments memorandum, p.17-18) are inappropriate to the issues before the Court. Labriola timely, pre-Mauro sought rectum rogare under the Agreement and was entitled to a timely decision thereon. For more than one year, the Government has been urging this Court to wait for the Mauro decision. Had this Court decided this motion in due course, the Court of Appeals could have and probably would have decided this case with Mauro. During pendency of the Mauro decision, the Government has stated its position to be that this case was factually different from Mauro. It now concedes the identity of facts, but urges decision based upon principles of retroactivity. This vacillation and inconsistency cannot and should not be allowed to deprive Labriola of rights granted to him by the United States Government, enforcement of which he has steadfastly and constantly sought.

Respectfully submitted,

PHILIP PELTZ
Attorney for Labriola
32 Court Street
Brooklyn, New York 11201
852-4335

CAROL MELLOR,
Of Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA :
- against - : 75 Cr. 659S
PAUL LABRIOLA, ET AL, : (M. A. C.)
Defendants. : TRAVERSE
----- X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

PAUL LABRIOLA, the defendant, pro se,
respectfully submits the following affidavit as a traverse to the Govern-
ment's opposition and Memorandum of Law herein [dated April 19th, 1977],
and upon all of the proceedings had herein, and being duly sworn, I say
as follows:

THE GOVERNMENT'S OPPOSITION BEGS THE
QUESTION, AND IS SPECIOUS, MISLEADING,
CONTRARY TO THE FACT PATTERN, CONTRARY
TO CASE AUTHORITY AND BEYOND THE
PLEADINGS HEREIN

1. I am the incarcerated defendant herein, singularly, and this
is my first opportunity to respond to the government's position in this
instant matter.

2. The government's position may be fairly stated by reciting
the second paragraph contained in Page 3" of said memorandum of law:

"Its our position that the motion to dismiss
indictment 75 Cr. 659 (S) should be denied
because the Mauro decision, rendered October
26th, 1976, should be held applicable only
to cases in which the sentenced State pris-
oner had been returned to State custody
without trial or final disposition of the
federal indictment after October 26th, 1976."

WHEREUPON, I assert and aver:

A. I still have not been tried, and the
dilatatory tactics of the Government together with the Government's over-use
and abuse of the Writ of Habeas Corpus Ad. Prosequendum is the root of the
Government's dilemma, not the law or the Interstate Agreement on Detainers

Act. The Act was law, binding on the United States and the State of New York from December 9th, 1970. Significantly, Judge Bartels made the specific finding that:

"...While it appears from the Senate Report that Congress was obviously responding to the need of the states for a procedure to secure the presence of federal prisoners the report also indicates that "the agreement shall enter into full force and effect as to a party 'State' when such State has enacted same into law..." [Mauro, supra, page 9.]

B. The United States Court of Appeals for the Second Circuit in affirming Mauro, and again in Ford, and in other similar issue cases, refused to alter with the clear and compelling will of Congress. The Circuit Court was succinct and declaratory as to when the entire Act became operative law: "In any event, aside from the fact that the Agreement as enacted fails to make the distinction now sought by the Government, Article VIII itself provides, 'This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law'". The tongue-in-cheek argument now advanced by the government is the same sore loser argument always advanced by the government: While attempting to enforce the law and make prosecutable cases, the Government proceeded in a manner banned by statute [The Agreement] but the relief prescribed by statute must not be afforded the defendants...(because)...We (the Government) did not think that we would be hampered by law...And... This is all nonsense and frivolous at that.

C. The Second Circuit, a bit weary from the overbearingness of the Government's almost violent opposition to a defendant's request for relief as provided by statute [the Agreement], said:

"Our interpretation of the Detainers Act should reflect Congress' purpose", Ford, page 11 of the Decision decided February 11th, 1977, and on page 16 the Court further declared that "...the language actually enacted is mandatory on this court. We therefore reverse the conviction...with prejudice." The Government has obviously repeatedly violated the Act, law since December 1970, and now urges the Court(s) that some form of latches apply because the Courts never responded so strongly to the Government's misuse of the Writ as well as to the Government's violation(s) of the Act until October 26th, 1976. I remind the Government that I have diligently pursued a determination from the Court on the within issue, but the Government successfully manipulated this Court under the guise of "Mauro" and convinced the Court to delay a decision until the Circuit Court disposed of the matter.

The Government violated law...the will of Congress, and many defendants were and are irreparably damaged thereby. This mild case of "latches" that the Government strongly urges the Court to accept as doctrine of this instant case can not "hold" even if there was a factual basis for the Government's defense of "latches" because, as every first-year Law Student knows, there is no defense of "Latches" when there exists a "continuing wrong." Does anyone have the right or privilege to keep the proceeds of a crime? Of Course not, and accordingly, the Government must never be permitted to obtain and sustain convictions that are clearly contrary to law then in effect.

3. On April 29th, 1976, during a regularly scheduled appearance before Your Honor on this indictment, I moved the Court to dismiss the above-captioned indictment as my very appearance in Court is contrary to the provisions of the Interstate Agreement on Detainers Act. My co-defendant's counsel made a similar request for his client. Our motions are not joined and must not be considered as companion motions because the fact pattern is somewhat different.

4. On May 4th, 1976, I submitted a Memorandum of Law in support of said motion then [and now] pending before Your Honor, which motion and Memorandum are properly filed under the above Docket number.

5. The timing of events in Mauro, to wit, when he was taken from the State, when he was returned to the State - unfinished - and again, retaken from the State; when he (Mauro) made his original motion before the Honorable John R. Bartels is precisely within the parameters of the time-pattern as it emerged in my instant matter.

THE-WISE, CASE-WISE AND MOTION-WISE,
I AM MAURO

6. Mauro's indictment has been dismissed, with prejudice and there is no longer any STAY of the mandate.

7. The Government's memorandum of law cleverly reminds this Court of my degree of criminality. Other than prejudice, no other purpose is served by this tactic. On the other hand, however, from the intensity of the Government's oppositions in these matters, I would venture a guess, that in the nearly seven years that the ACT was [and is] law, they

molested a great many defendants in a fashion quite similar to the methodology used in molesting me, Mauro, Fusco, Ford and the cases cited in the decisions therein. I submit, contritely, that I have answered for the "Sins of Labriola", and will continue to so answer for some time to come regardless of the final adjudication of this instant motion for relief on the above-captioned indictment. I violated laws that I did not even know for a certainty existed as statutory serious criminal charges; wrong is wrong, and I am "answering". The Government is wrong, and its violations and abuse of the Writ since 1970 is legion, and the only relief afforded a defendant is that which is provided for by statute: Dismiss the indictment with prejudice.

W H E R E F O R E, the motion should be granted.

Respectfully submitted,

Paul Labriola
Paul Labriola, pro se*

*Enclosed is a copy of a letter recently received from appointed counsel, Philip Peltz, explaining his difficulty in further representing me in this matter. Accordingly, this Traverse is submitted pro se.

I have read the foregoing, and I know the contents therein, and I know the same to be true.

Paul Labriola

Sworn to before me this 22nd
day of April, 1977.

[Signature]
7, 1977
[Stamp]

182

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

DGT:BJF:jmb
F. #

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT, E.D.N.Y.

★ AUG 09 1977 ★

TIME A.M. _____
P.M. _____

June 1, 1977

Honorable Mark A. Costantino
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Paul Labriola
75 CR 659(S)

Dear Judge Costantino:

During oral argument on defendant Paul Labriola's motion to dismiss indictment No. 75 CR 659(S) on the ground that the Interstate Agreement on Detainers, 18 U.S.C. App., had not been complied with, the defendant stated to the Court that he had moved for a speedy trial pursuant to Article IV(c) of that Agreement.

Initially, we note that in open court, on May 12, 1976, defendant Labriola expressly waived his right to a speedy trial pending determination by the Court of Appeals of the Mauro case. (Minute of 5/12/76, pp. 17 - 18, see also pp. 32 - 33). We contend that this constitutes compliance with Article IV(c) which permits a waiver of the one hundred and twenty day requirement for good cause shown in open Court. See, United States v. Ford, 550 F2d. 732, rehearing and rehearing en banc denied May 9, 1977 (2d Cir. 1977).

Thereafter, by pro se Motion for Dismissal of Indictment, dated October 22, 1976, defendant moved to dismiss Indictment No. 75 CR 659(S) on the ground, inter alia, that more than 180 days have elapsed without a prompt and speedy trial. This Motion was filed on November 1, 1976, and decision was apparently reserved by the Court. We contend that inasmuch as Labriola, represented by counsel, had waived his speedy trial rights after May 12, 1976, that this pro se motion did not constitute a revocation of this counseled waiver.

Accordingly, since the October 22, 1976 motion did not

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Honorable Mark A. Costantino

- 2 -

June 1, 1977

implicate Article IV(c), nor could it have since Ford was not decided until February 3, 1977 and for reasons similar to those advanced in our Memorandum of Law, dated April 19, 1977, should not be retroactively applied, the indictment, we contend, remains viable.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By:

Bernard J. Fried
Bernard J. Fried
Assistant U. S. Attorney
Chief, Appeals Division

cc: Paul Labriola
Metropolitan Correctional Center
150 Park Row
New York, New York

Philip Peltz, Esq.
32 Court Street
Brooklyn, New York 11201

LAW OFFICES
OF
PHILIP PELTZ

(212) 852-4335

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IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

32 Court Street, Brooklyn, New York 11201
TENTH FLOOR

PHILIP PELTZ

CAROL MELLOR

★ AUG 15 1977 ★
TIME A.M. _____
P.M. _____

June 7, 1977

HONORABLE MARK A. CONSTANTINO, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: U.S.A. v. Paul Labriola
75 CR 659(S)

HONORABLE SIR:

The Government's letter dated June 1, 1977, displays a conveniently myopic view of the stipulation entered into between the government and defendant regarding the Mauro decision.

The record will reflect that the Government was anxious to have this Court reserve decision on defendant's motion, that pursuant to the Government's request, decision on defendant's motion was held in abeyance pending the Mauro decision from the U.S. Court of Appeals, Second Circuit. Pursuant to this request by the Government on May 12, 1976, defendant agreed to await Mauro. As time elapsed without word from the Court of Appeals, defendant withdrew his waiver of his speedy trial rights by application pursuant to Article IV(c) of the Interstate Agreement on Detainers.

The Government's position however, from the time the original motion was made until Mauro was decided was that the Mauro decision would be conclusive as to the interpretation of the Interstate Agreement on Detainers. The Government reserved the right to attempt to factually distinguish the instant case from Mauro. This position was reiterated by Government counsel, Ms. Marsha Katz, at various status conferences on the instant case.

LAW OFFICES
OF
PHILIP PELTZ

32 Court Street, Brooklyn, New York 11201
TENTH FLOOR

CAROL MELLOR

PHILIP PELTZ

The Government now is attempting to hold defendant to his part of the stipulation while reneging upon and abrogating its position, entered into by counsel. Neither the Government's brief nor any paper submitted with the knowledge of defendant after the Mauro decision attempts to factually distinguish Mauro from the instant case. The Government now seeks to weasel out of its stipulation as to Mauro, claiming grounds of non-retroactivity

Egregiously, the Government wishes this Court to hold that a defendant may not change his position, but the Government may, at will. We respectfully submit that litigants in a proceeding are to be treated equally, and that the Government does not and should not have the right to abrogate an agreement and then turn around and demand defendant's adherence thereto.

Respectfully,

PHILIP PELTZ
ATTORNEY for DEFENDANT, Labrio

PP:af

cc: Bernard J. Fried, Esq.

Mr. Paul Labriola

Caballero

A186

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U. S. DISTRICT COURT E.D. N.Y.
NOV 1 1976
A.M.
P.M.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)
V)
PAUL LABRIOLA)

No. 75CR659(E)

MOTION FOR DISMISSAL OF INDICTMENT

Comes now in pro se, Paul LaBriola, hereinafter called the defendant. The defendant moves that the indictment in the case before this Honorable Court designated Docket No. 75CR 659 be dismissed on the following grounds:

- 1) That the government has failed to prosecute;
 - a) Defendant has requested and insisted on a trial on this charge and has been unsuccessful. Defendant now moves for dismissal with prejudice, as the Government has let 180 days elapse on the original indictment.
 - b) Then the Government brought a superceding indictment on March 30, 1976, and again more than 180 days have elapsed without a prompt and speedy trial, thus prejudicing defendant.
- 2) The indictment does not state facts sufficient to constitute an offense against the United States, and further nowhere in the indictment does it say that any banks are involved or that bonds cashed were cashed in any F.O.I.C. member banks.
- 3) Nowhere does indictment say any money was taken on any ^{Cov. T.} property or land. The indictment alleges that for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly to obtain or receive from the United States or any officers or agents thereof, any some of money. The defendant claims that no some of money was taken from the United States or any officers or agents thereof, as required under titla 18, U.S.C. 2, to constitute an offense against the United States.

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4) Under Title 18, U.S.C. 495, defendant claims that no counterfeit writing was uttered or published with intent to defraud the United States or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money.

5) That the only argument ^{THE COURT,} can give is that banks being members of the F.D.I.C. are officers or agents of the United States. Defendant claims that nowhere in indictment No. 75CR 6595 does it allege that money was taken from any F.D.I.C. member bank. Further, when Title 18, U.S.C. Sect. 2113 was enacted, Section 588 (a), and (c) of Title 12 U.S.C. 1940 ed., banks were embodied into same; (see Title 18, U.S.C. annotated, 2113, historical and revision notes.) The District Court under U.S.C. 3231, has original jurisdiction, exclusion of the courts of the states, of all offenses against laws of the United States; such courts jurisdiction relating to bank crimes and felonies is interpreted to conform with *Jerome v U.S.*, 635 Ct. 483, 318 U.S. 101, 87 O. ed. 640, 1943, and *Jerome* interpretation excludes state's felonies and includes only those Federal felonies which affect banks protected by the act.

Since there was no common law offense against the United States, *Jerome v U.S. supra.*, the federal Court's resort to common law merely for the definition of terms by which offenses are designated; *Pettibone v U.S.*, 148 U.S., 197, 370 ed 419, 13 S.Ct. 542, Title 18 U.S.C.A. 3221. The case of *U.S. v Bass* No. 70-71 decided on Dec. 20, 1971, ruled; as this court emphasized last term in *Rawl v U.S.*, *supra* "We will not be quick to assume that Congress has not meant to effect a significant change in the sensitive relation between Federal and state criminal jurisdiction."

In traditionally sensitive areas, such as legislation affecting the Federal balance, the requirement of a clear statement assures that the legislative has in fact faced and intended to bring into issue, the critical matters involved in the judicial decision. (401 U.S., 808, 812; 1971) It is clear as to its intentions and defendant's case must be considered in light of same jurisdiction.

The F.D.I.C. Insurance and Depositors' funds covers only "BANK FAILURE"! Such risks as robbery, burglary, larceny, forgery, embezzlement, etc., are insured against by private insurance companies under the classification of "Hazardous risks" insurance, and/or "Felonious hazards".

The facts surrounding the F.D.I.C. tend to conclusively reveal several essentials in that; 1) by virtue of repayment of the original loan and interest thereon, the government no longer has any investment to protect and lay no claim of ownership, proprietorship, or proprietorability in the F.D.I.C.

2) The 1950 act withdrawing 128 from the Federal Reserve Act Making a separate act creating the F.D.I.C. plainly severed such corporation prior "Federal Agency" status from the government and 3) as F.D.I.C. insures the depositors solely against bank failure. The loss of funds by forgery is insured by private companies and is not an offense against the U. S. since the F.D.I.C. is nothing more than a banks' controlled private insurance company whose sole function is to provide funds to depositors when the bank in which they have deposited their funds fails.

There is no valid cause to confer Federal jurisdiction in a bank forgery involving F.D.I.C. funds when in fact and in truth, the F.D.I.C. does not make good the monies involved in a bank forgery concerning U.S. Savings Bonds. In fact, in any matters regarding any national banking association, they only have original jurisdiction exclusive of the states in "any civil action commenced by the U.S. against any national banking association.", and any action by a banking association established in the district for which the court is held under Ch. 2 of Title 12, to enjoin the controllers of the currency. Title 28, U.S.C., 1348 (June 25, 1948 CH. 646.62 Stat. 9337, Title 28 U.S.C. 1348) further holds that all national banking associations shall for the purpose of other action by or against them, be deemed citizens of the state in which they are respectively located. See rule 2, Federal Rules of civil procedure, which mandates sole sanction in the Federal Courts is to be "civil action".

~~3) The fugitive act as contained in Title 18~~ U.S.C., 1073, permit Federal intervention only where the law breaker flees beyond the borders of the state in which the crime was committed. Federal courts have jurisdiction exclusive only in "civil action" rule 2, Federal Rules of Criminal Procedure and no common law jurisdiction in criminal cases. (Jarome v. U.S. Supra) The only exception going to the use of common law in a criminal case in Federal courts is where a crime is committed on Government Property, and Federal law covers such crimes.

Defendant contends, and records and statutes will bear defendant out, that:

- 1) the F.D.I.C. is not a government agency, possession or territory.
- 2) that the U.S. Government can not lay claim to ownership, proprietorship, or propriety of the F.D.I.C.
- 3) that said banks are covered by insurance policy to cover bank failure only by the F.D.I.C.
- 4) that said banks carry a "felonious hazard" insurance policy issued by a state-controlled private enterprise insurance company.

5) In any event, the indictment lacks the showing of any offense against the U.S. Nowhere in the indictment does it show where the U.S. was aggrieved in manner.

6) The indictment of the defendant in the U.S. District Court in and for the Eastern District of New York for the crime of aiding and abetting to forge U.S. Savings Bonds, Title 18 U.S.C. Sect. 2 and 495 is invalid. Nothing in this Title shall be held to take away or impair the jurisdiction of the courts of the several states under the laws therefore.

In view of the foregoing it is avicant that the U.S. indicted the defendant without proper and lawful jurisdiction in criminal case No. 75 CR 5595.

Wherefore defendant respectfully prays that this unlawful and unconstitutional indictment be dismissed with prejudice.

Signed: Paul LaBriola

Paul LaBriola, pro se

Address: F.C.I.

Pembroke Station

Danbury, Conn. 06810

Witness that Paul LaBriola who states that he is the petitioner in the above motion and did appear before me and affix his signature hereto on the _____ day of October, 1976.

Signed: M. R. Perry

Title: _____

Date: 10-22-76

Notary Public for the Act of July 7, 1955
to amend the Act (33 U.S.C. 4004)".

A190

FILED
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U. S. DISTRICT COURT E.D. N.Y.

★ DEC - 3 1976 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M. _____
P.M. _____

-----X.

UNITED STATES OF AMERICA

-v-

75 CR 617(S)

PAUL LABRIOLA

Defendant

-----X

GOVERNMENT'S RESPONSE

Respectfully Submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York

CHARLES L. WEINTRAUB
Acting Attorney-in-Charge
Organized Crime & Racketeering Sec.

By: Marsha Katz
Special Attorney of Counsel

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

-v-

RESPONSE
75 CR 659S

PAUL LABRIOLA

Defendant

-----X

GOVERNMENT'S RESPONSE

Now comes the Government by and through its attorney, David G. Trager, United States Attorney, United States Department of Justice, and supplies the following response to defendant PAUL LABRIOLA's Motion To Dismiss Indictment 75 CR 659S.

The defendant PAUL LABRIOLA was indicted for violation of Title 18, U.S.C. § 371 (original indictment, 75 CR 659) on September 8, 1975. This indictment was dismissed by the Government on March 30, 1976. On March 29, 1976, a 38 count indictment was filed against PAUL LABRIOLA charging him with violations of Title 18, U.S.C. §§ 495 and 2. On March 30, LABRIOLA was arraigned and the government gave oral notice of its readiness to proceed to trial. Trial was set for April 23, 1976. On April 29, 1976, the case was called for trial and a jury was selected but not sworn. On May 4, 1976, the defendant PAUL LABRIOLA moved to dismiss the indictment under the Inter-state Detainer Act. The court reserved

decision pending decision of the Court of Appeals for the Second Circuit in U.S. -v- MAURO. With the defendant's consent the jury was dismissed and the case was adjourned pending decision by the Second Circuit on the Detainer Act. At all times the government has been ready for trial.

Since the defendant was indicted and arraigned prior to July 1, 1976, this case is governed by the Interim Plan of E.D.N.Y. for the Prompt Disposition of Criminal Cases. The government's obligations under Section 5 of the plan is to state its readiness for trial within six months. This is the government's only obligation under the plan and there is no question that in the present case this was done.

The defendant's arguments in Points 2 thru 6 are absurd and wholly without merit and are irrelevant to the issues in this case.

The indictment charges PAUL LABRIOLA with Title 18, U.S.C. §§495 and 2. The relevant portions of Title 18, U.S.C. § 495 are:

§ 495. Contracts, deeds, and powers of attorney

Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or

Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited;

Shall be fined not more than \$1,000 or imprisoned not more than ten years, or both.

Title 18, U.S.C. § 2 provides

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes and act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal. As amended Oct. 31, 1951, c. 655, § 17b, 65 Stat. 717.

The defendants in U.S. -v- CALABRO, 467 F. 2d 973 (2d Cir 1972) argued that "a Series E bond is not embraced within the wording of 18, U.S.C. 495 and that the forgery of endorsements on otherwise genuine bonds does not violate that section." The Second Circuit rejected these arguments as without "merit." The Court, citing PRUSSIAN -v- U.S., 282 U.S. 675 (1931) stated: that "an endorsement is a writing" within the purview of the section. And a forged endorsement on an obligation such as a government savings bond, if made 'for the purpose of obtaining a sum of money from the Treasury of the United States,' constitutes a violation of § 495. See also U.S. -v- CAMPO, 414 F. 2d 765 (2d Cir. 1969). In CALABRO the court held that where each of the forgery counts charged that the endorsements were forged for the purpose of obtaining money from the United States and each of the uttering counts charged that the passing was done with intent to defraud the U.S., knowing the payees name to be false thereon, the indictment was sufficient to charge a violation of Title 18, U.S.C. § 495. This very language is contained in Indictment 75 CR 659S.

For the above reasons the defendant's motion must be denied.

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

JEAN BARONE, being duly sworn, says that on the 3rd day of DECEMBER, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a GOVERNMENT'S RESPONSE of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Mr. Paul Labriola
Metropolitan Correctional Center
150 Park Row
New York, N.Y.

Sworn to before me this

3rd day of December, 1976

Jeane Barone
Secretary to Special Attorney

AFFIDAVIT OF PERSONAL SERVICES

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

_____, being duly sworn, says that he is employed in the office of the United States Attorney for the Eastern District of New York. That on the _____ day of _____, he served a true copy of the annexed _____ on the office of _____ attorney for _____ herein, located at _____, Borough of _____, City of New York, by leaving a true copy of same with his clerk or other person in charge of said office.

Sworn to before me this
day of _____

United States District Court
Eastern District of New York

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

DEC 29 1976

UNITED STATES OF AMERICA

V.

PAUL LABRIOLA

Defendant

Docket No.

TIME AM

75 CR 659 S

State of Connecticut
County of Fairfield

TRAVERSE TO RETURN

Paul Labriola after first being duly sworn, deposes and says that he is the defendant and hereafter called the defendant in answer to the Governments response in Crim. Case No. 75 CR 659 S.

1. The Governments answer that the court is waiting for the decision pending in the court of appeals for the second circuit in U.S. V. Mauro is tottaly absurd, The second circuit has already ruled and affirmed Judge Bartels decision in dismissing the charges against Mauro under the interstate agreement act.

2. The defendant has insisted on a trial and on March 30, 1976 the Government dismissed the original indictment, then came back with a superceeding indictment, but the Government fails to state that the superceeding indictment was after the one hundred and eighty days had already elapsed in the original indictment making the superceeding indictment invalid to begin with.

3. The defendant consented to ajourn the case only until June 7, 1976 waiting for the Mauro decission. The court waited and granted the continuance for the Government over the defendants strong objections.

4. On November 12, 1976, again with the defendant in absentia the court granted still another postponement for the Government until December 10, 1976, even though the Government could not use the Mauro/as an excuse because the second circuit had already ruled. The defendants attorney argued and objected strenuously but the court continued the case until December 10, 1976.

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5. On December 10, 1976 again and with no valid reason the case has been adjourned to January 26, 1977 and again over the strenuous objections of the defendant.

6. The Government fails in their response to show any offense against the United States saying solely that the indictment is covered by the language in indictment No. 75 CR 659 S. The defendants claim has not been answered by the Government. The Government used U.S. V. Calabro 467 F.2d 973 (2d Cir. 1972) but fails to state that, that is not what defendant is claiming. They claim that "a series E bond is not embraced within the wording of eighteen U.S.C. 495, and that the forgery of the endorsements on otherwise genuine bonds does not violate that section". The second circuit rejected those arguments as without "merit". Citing Prussian V. United States 332 F.2d 675 (1931) stated that an endorsement is a writing within the purview of the section and a forged endorsement on an obligation such as a Government Savings Bond, if made for the purpose of obtaining a sum of money from the treasury of the United States constitutes a violation of 495. That is where defendants claim differs in that defendant claims it was not made to get a sum of money of the United States and defendant has shown that it was not made to obtain money from the treasury of the United States. (C.F. private insurance companys had lost the money) no where has United States argued or proven that they are not in error or shown by the fact any reasons to verify monies were taken from the United States Government. The United States Attorney has avoided and skirted the question resolving the loss to an insurance company and the jurisdiction the insurance company would fall under whether it would be a private insurance company of the F.D.I.C. and what catagory/falls under.

For the above reasons the defendants motion must be granted.

Respectfully submitted

Paul Labriola
Pembroke Station
Danbury, Connecticut 06810

Sworn and subscribed before me this

21st day of December 1976

E. A. Gouley
Cassworker F.C.I.

E. A. Gouley
Authorized by the Act of July 7, 1957
administer oaths (18 U.S.C. 4004)

Federal Correctional Institution
Danbury, Ct. 06810



AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

DOLORES M. BYRD being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 27th day of September 19 77 he served ^{two copies} ~~XXXXX~~ a copy of the within
BRIEF FOR THE APPELLEE AND APPENDIX

by placing the same in a properly postpaid franked envelope addressed to:

PHILIP PELTZ, ESQ., 26 COURT STREET, BROOKLYN, NEW YORK 11201

STEVEN HYMAN, ESQ., 370 LEXINGTON AVENUE, NEW YORK, NEW YORK

and deponent further says that he sealed the said envelope and placed the same in the mail chute
drop for mailing in the United States Court House, ^{225 Cadman Plaza East} ~~Washington Street~~, Borough of Brooklyn, County
of Kings, City of New York.

Dolores M. Byrd

Sworn to before me this

27th day of September 19 77

Barbara A. Allen

BARBARA A. ALLEN
Notary Public, State of New York
No. 24-6646824
Qualified in Kings County
Commission Expires March 30, 1979